

RULEWRITING MANUAL FOR UTAH

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RULEWRITING MANUAL FOR UTAH

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ADMINISTRATIVE LAW OVERVIEW

I. INTRODUCTION—WHAT IS ADMINISTRATIVE LAW?

A. Separation of Powers

The Utah Constitution provides separate and distinct functions for the executive, judicial, and legislative branches of government. Basically, the legislative branch enacts the laws under which society operates. The executive branch enforces the law. The judicial branch interprets law.

Each branch has certain powers, granted either by the Utah Constitution or the legislature through statute.

The body of law governing the powers and duties of executive agencies is known as administrative law.

B. The “Legislative” Powers of an Administrative Agency

Statutes enacted by the legislature often establish a program, designate an agency to carry out the program, and provide guidelines for implementation. Because the statute typically does not spell out every detail, the designated agency may need to interpret the legislature’s intent and develop a method to implement the program. Since the constitution requires the law to be applied equally, rules may be necessary to ensure administrators do not act arbitrarily in interpreting the statute and implementing the program.

The legislature may specifically mandate rules and it may indirectly require them by authorizing a function which it has elsewhere stated necessitates rules (for example, in the *Utah Administrative Rulemaking Act*). Each rule supplements a specific statute and has the force and effect of law. In case of conflict between rule and statute the statute prevails.

Rulemaking then, is an administrative agency’s lawmaking function. But rulemaking is “legislative” only in a restricted sense: agencies do not originate the state’s policy, their rules merely carry it out. Agency lawmaking is more limited than the legislature’s because a rule is dependent on the statute it implements. If the legislature changes the statute, the rule may no longer be consistent with the statute, and therefore may no longer be valid.

Legal authorities often describe rulemaking as an *inherent* power of executive branch agencies, a power founded on the governor’s constitutional obligation to faithfully execute the laws. Thus, even if the legislature granted no specific authority for an agency to make rules, it is likely that the courts would uphold reasonable rules the agency adopted to implement its powers and duties.

C. Quasi-Judicial Powers of an Administrative Agency

The agency uses the rules it develops in conjunction with the statute to carry out the law. One setting in which an agency does so is in administrative hearings. An agency’s authority to conduct these hearings and make findings of fact and conclusions of law which affect an individual’s rights is a quasi-judicial authority. The procedures for administrative hearings are specified in the *Administrative*

Procedures Act (see Appendix B, page [103](#)). Administrative hearing decisions are subject to review by the courts.

II. WHAT IS AN ADMINISTRATIVE AGENCY?

Administrative agencies are usually the subdivisions of the executive branch, referred to as departments, divisions, agencies, offices, bureaus, and commissions. They may include quasi-governmental agencies (i.e., School and Institutional Trust Lands Administration) or public corporations (i.e., Utah State Fair Corporation). Agencies are given the responsibility to maintain and operate most state government functions.

The legislature creates administrative agencies for a number of reasons. First, agencies handle the daily operations of government. In Utah, the legislature is part-time and meets for only 45 days each year in regular session. And, although the constitution charges the governor with the enforcement of the law, enforcing the law requires close scrutiny on a continual basis. Therefore, both the legislature and the governor rely on administrative agencies to assist in carrying out day-to-day enforcement activities.

Second, agencies provide needed technical expertise. Government has a general obligation to protect the health, safety, and welfare of the public. Providing this protection involves special skills. Assistance to the needy, pollution control, communications, and transportation are just a few of the areas that government regulates. Successful administration of such a wide range of issues demands the abilities of persons who have had a good deal of experience and training. Public employees provide the necessary expertise to regulate these areas.

Third, agencies meet the need for flexibility to deal with emergency situations quickly. Because the legislature cannot be in session during every crisis, it delegates the authority to the agencies to meet emergency needs as they arise.

Finally, agencies provide continuity and stability to government. The persons who hold legislative and gubernatorial offices change on a regular basis. Administrative agencies provide the continuity missing because of legislative and gubernatorial turnover. The general public needs to interact with government on a daily basis and must be able to rely on consistency in the operating procedures and decisions made by an agency.

III. WHAT IS THE AUTHORITY OF AN ADMINISTRATIVE AGENCY?

A. Constitutional and Statutory Foundation

Administrative agencies are usually created by statute passed by the legislature. A constitutional provision or executive order may also create an agency. Statutes establish most of the powers and functions of administrative agencies. The powers of an agency may be narrowly or broadly defined depending on the amount of discretion an agency needs to carry out its mandate.

B. Rulemaking

Agency rulemaking grants no authority not already conferred by the constitution or statute. Rules, however, interpret and clarify agency authority by specifying the functions, standards, and procedures applicable to the public employees' carrying out of the legislature's program. As extensions of the statutes they implement, rules govern what the public may or may not do in a manner consistent with the purpose of the statute.

C. Executive Orders

The governor directs the policy of the executive branch and may issue specific executive orders embodying that policy. Executive policy, however, is itself derived from constitutional or statutory authority. Agencies implement the governor's policy through internal procedures or through rules, but may not exceed what the legislature has authorized.

D. Discretion

An administrative agency needs a degree of discretion in order to be sufficiently flexible to provide efficient and expert decision making. However, an agency's flexibility must be limited to prevent arbitrariness and abuse of power. Determining what the limits are has been fundamental to the evolutionary development of administrative law. A significant purpose of administrative rules is to clarify the limits of agency discretion. The two-sided nature of this concept is reflected in Kenneth Culp Davis' *Administrative Law Treatise*, in which Davis states: "Any officer who has discretionary power necessarily also has the power to state publicly the manner in which he will exercise it" (Davis, 6.16, 1970 supp.).

IV. WHAT IS THE RULEMAKING POWER OF AN ADMINISTRATIVE AGENCY?

The rulemaking power of an administrative agency is a lawmaking power. It is a process governed at the state level by the statutes that establish the agency and grant it authority, as well as the statute that defines rulemaking generally (the *Utah Administrative Rulemaking Act*, UTAH CODE Title 63, Chapter 46a, see Appendix A, page 93). An administrator who makes rules is in a sense a lawmaker, but with more limited authority than a legislator. Unlike judicial hearing procedures, rulemaking does not strictly involve due process rights since no one has a right to see that a certain policy is enacted. However, the legislative and judicial functions of an administrative agency often overlap and it is sometimes difficult to distinguish between the two. It is helpful to classify an agency's actions in certain ways. When it is acting more like a legislature than a court, an agency is taking quasi-legislative action. Rules made under such authority are general in scope. They are made to apply to all persons in a class and not to particular parties or a single individual. On the other hand, agency adjudicatory decisions affect only the parties involved in the particular action, though, of course, they may set precedents applicable in later agency cases. Subsection 63-46a-3(6) requires an agency to make a rule that applies generally when an adjudication establishes a principle of law.

The legislation creating an agency outlines and restricts the agency's authority, which in turn restricts the scope of its rulemaking powers. Each agency is granted authority over a limited area of government and can only make rules regulating that area. *If an agency takes an action that exceeds the scope of the authority delegated to it by the legislature or the constitution, that action is unlawful.* Rules

promulgated outside the scope of authority of an agency are unenforceable. In addition, courts have overturned rules that are arbitrary, capricious, an abuse of discretion, illegally enacted, or otherwise not in accordance with the law. This means that each rule must have some reasonable basis grounded in the language and intent of the statute or constitution and should be related to the purposes the administrator intends to accomplish.

Administrative law is a comparatively new field in which relatively few issues have been tested in the Utah courts. In Utah, the first rulemaking act was enacted in 1973 and no uniform adjudicative procedures were enacted until 1988. Administrators and attorneys dealing with administrative law face the adventure of plowing new ground in a field of increasing importance.

ADMINISTRATIVE RULES

I. WHAT IS AN ADMINISTRATIVE RULE?

After passage of a statute by the legislature, an agency affected by the statute should review it and determine whether new administrative rules, or revisions of old rules, are necessary to carry out the statute's provisions. A new statute is not necessarily a condition precedent to making or changing a rule. Public comment, modernization or streamlining of procedures, or review of existing rules may also prompt the need for changes. Whatever initiates the process, rulemaking requires an agency to operate in a legislative manner to establish an interpretation, clarification, standards, or procedures under authority outlined by the legislature (as described in the previous chapter). An administrative rule, then, is a form of *law*, made under powers granted the agency by the legislature or directly by the Utah Constitution.

Rulemaking, therefore, is a serious undertaking. Rules properly enacted have the full force and effect of law and should be regarded with a respect similar to that accorded statutory law. As with statute overturned in the courts, however, a rule incorrectly implemented or unauthorized by statute is ineffectual and may generate a costly lawsuit against the agency or the state.

Under Utah law (Subsection 63-46a-2(16)), "administrative rule" is fairly broadly defined, giving agencies a degree of latitude to decide what to include or exclude among their rules.

"Rule" means an agency's *written statement* that: (i) is *explicitly or implicitly required* by state or federal statute or other applicable law; (ii) has the effect of law; (iii) *implements or interprets* a state or federal legal mandate; and (iv) applies to a *class of persons or another agency*. "Rule" includes the amendment or repeal of an existing rule.

"Rule" does not mean: (i) orders; (ii) unenforceable policies; (iii) internal management policies of the agency that do not restrict the legal rights of a class of persons or another agency; (iv) the governor's executive orders or proclamations; (v) opinions issued by the attorney general's office; (vi) declaratory rulings issued by the agency according to the provisions of Section 63-46b-21 except as required by Section 63-46a-3; or (vii) rulings by an agency in adjudicative proceedings, except as required by Subsection 63-46a-3(6). (Subsection 63-46a-2(16), *emphasis added*)

II. RULE OR REGULATION?

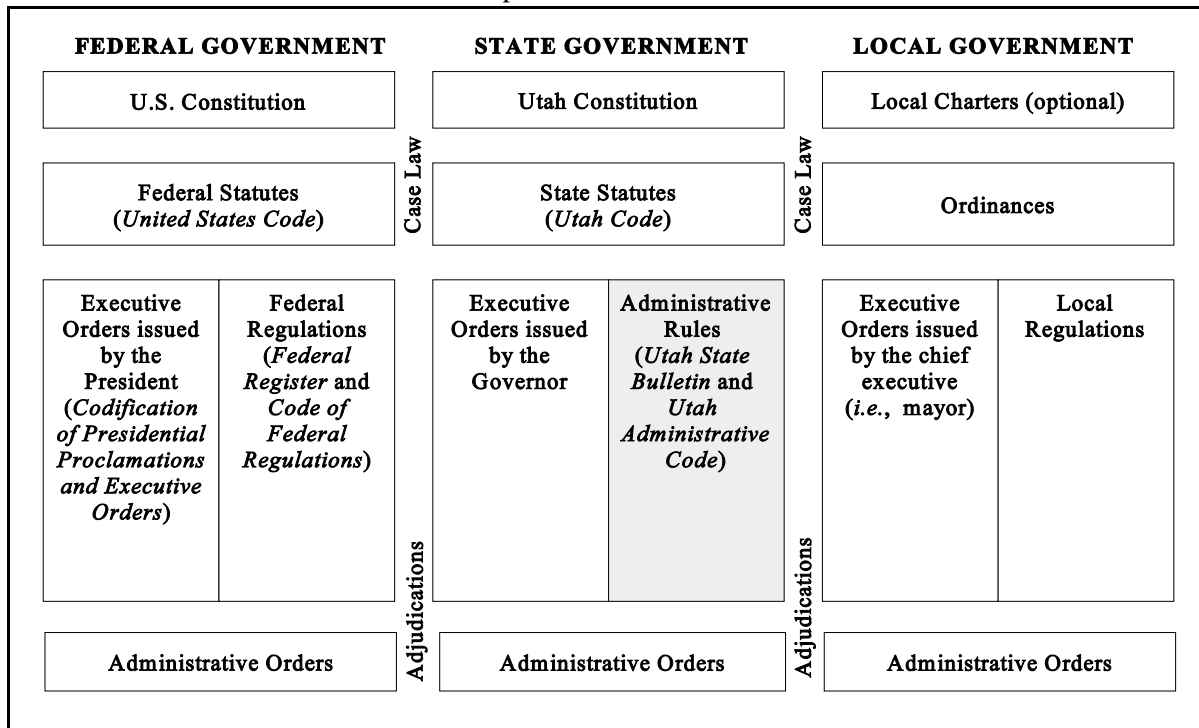
In the *Utah Administrative Rulemaking Act*, administrative rules are "rules"; they are not "regulations," "guidelines," or "policies." They are not "rules and regulations." Of course, to avoid repetition, we often use "policy" or "regulation," but the official (statutory) word for all of these is *rule* when referring to an administrative rule authorized by law. Except with reference to federal regulations, nowhere in the Rulemaking Act is the word "regulation" to be found. There are statutory references to "regulations" outside the Act, but they are gradually being corrected. In the meantime it is useful to refer to federal rules as "regulations" (but "rules" if they are adopted by the state), internal agency rules as "policies," and all state rules as "rules."

III. WHAT IS THE LEGAL CONTEXT FOR AN ADMINISTRATIVE RULE?

An administrative rule fills a specific function under the law. The Rulemaking Act indicates that a rule implements or interprets state or federal legal mandates, and that it has the effect of law. An administrative rule, therefore, may not be written in a vacuum. To understand what rules should, or should not, include, it is important to understand where they fit in the overall legal context. [Figure 1](#) presents a simplified context in which a rule exists.

Figure 1

“Administrative Rules In Context: A Simplified Illustration”



IV. WHY MUST AN AGENCY HAVE RULES?

First, rules may be required by law. Not only does the Rulemaking Act require rules in defined circumstances (see “Criteria for Rules” on page [7](#)), but many statutes contain a clause similar to the following: “the agency shall make all rules necessary and proper to carry out the provisions of this act.”

Second, an equally practical reason for rules is to avoid costly lawsuits and the possibility that a court may find the agency, or even its employees individually, liable for damages. Nationally, court decisions dealing with the need for rules have been confusing and often contradictory. In general, the judicial trend has been to require rules setting limits to agency discretion. Actions taken within the limits set by rule are generally upheld unless they obviously exceed the authority granted by statute or are unconstitutional. Actions not made in accordance with specific statutory or administrative rule authority

may be held invalid, even if they appear consistent with the purpose of the agency. Not only may agency action be overturned by the court, but if the agency's action resulted in some loss or damage, the agency—and increasingly employees personally—may have to pay.

Among the Utah Supreme Court cases that govern Utah rulemaking requirements are *Williams v. Public Serv. Comm'n* (754 P.2d 41 (1987)) and *Lane v. Board of Review of Indus. Comm'n* (727 P.2d 206 (1986)). In these cases the Court appears to invalidate agency actions not taken in accordance with the provisions of the Rulemaking Act. In effect, an agency may be liable to suit by an offended public, and persons and entities may disregard its orders, if its rules are not properly enacted. Potential costs in administrators' time and agency resources ought to be sufficient incentive for agencies to properly make its rules.

V. WHEN IS A RULE NECESSARY?

A. In General

Rulemaking is necessary if an agency needs standards or procedures to carry out a statutory mandate and none are provided by the statute itself. For example, suppose the legislature passes a law requiring that all widget sellers be licensed and places the authority for administering the law with the Department of Commerce. The statute does not provide any guidelines as to how that department should carry out the licensing requirement. The department, in this circumstance, must adopt procedures that can be uniformly applied to all members of the public desiring to be licensed widget sellers. In this case, rules serve a number of purposes. First, the public will have notice of what the agency requires of a person to become a licensed widget seller; second, would-be applicants are informed regarding how to apply and by what procedure the application will be handled; third, the agency avoids arbitrary decision-making because the same procedures are applied uniformly to each widget seller.

Rulemaking is also necessary if a statute requires clarification, that is, if statutory intent or sections of a statute could be interpreted in more than one way. For example, suppose the legislature passes a law requiring that a court automatically suspend or revoke the driver license of a person convicted of Driving Under the Influence (DUI). However, another statute provides that the Department of Public Safety suspend a person's driver license shortly after arrest but before a court of law has taken action. Was it the legislature's intent that a driver license be suspended twice at different times for the same offense or did the legislature merely feel strongly that a DUI offense required the suspension of a license at some time? The agency can clarify these statutes through rulemaking. If the interpretation the agency provides is not consistent with legislative intent, the legislature may clarify the statute by amendment.

Nevertheless, rulemaking is not required for every statute. If the statute is clear and provides guidelines in sufficient detail to direct the agency through implementation, then rulemaking is not necessary.

B. Criteria for Rules

1. Rulemaking is *required* when any of the following are true:

- a state law, court order, or a federal statute or regulation explicitly require a rule (Subsection 63-46a-3(2));

- a statute requires interpretation or clarification for its implementation (Subsection 63-46a-3(3));
- an agency:
 - authorizes, requires, or prohibits an action;
 - provides or prohibits a material benefit;
 - applies to a class of persons or another agency; AND
 - is explicitly or implicitly authorized by statute (Subsection 63-46a-3(2));
- an agency establishes by adjudicative decision a principle of law that qualifies as a rule (Subsection 63-46a-3(6));
- an agency changes an existing rule;
- five years have passed since an existing rule was originally enacted (Subsection 63-46a-9(1)).

All state agencies must enact rules conforming with the foregoing criteria. “Agencies” includes boards, authorities, commissions, institutions, departments, divisions, officers, and other state entities. “Agencies” does not include the legislature or its committees, courts, and the political subdivisions of the state such as cities, counties, and school districts.

2. Rulemaking is *not required* if any of the following are true:

- an agency action applies only to:
 - internal agency management;
 - inmates or residents of a state correctional, diagnostic, or detention facility;
 - persons under state legal custody;
 - patients admitted to a state hospital;
 - members of the state retirement system; or
 - students enrolled in a state educational institution (Subsection 63-46a-3(4)(a));
- the agency issues a plan, unenforceable guideline, or a broad policy statement or internal employee procedure not imposing a requirement on the public or another agency (Subsection 63-46a-3(4)(c));
- an agency statement is only advisory, informational, or descriptive (Subsection 63-46a-3(4)(b));
- an agency statement is written in an agency manual and applies only to the administrative detail or fiscal details of other agencies (Subsection 63-46a-3(4)(b)), EXCEPT that administrative and fiscal details do not include:
 - general, broad requirements imposed on agencies;
 - action that may affect individual legal rights; or
 - actions in which the public may have definable interests;
- a statute is explicit and does not require additional procedures or clarification;
- an agency requires specifically named persons, corporations, or other associations— not a class of them—to do or not do something (an action affecting specifically named persons is covered by the *Administrative Procedures Act*, Title 63, Chapter 46b).

State statutes, governor’s orders, attorney general opinions, court decisions, and legislative rules are not administrative rules.

C. Guidelines for Rules

There are situations where rulemaking may or may not be required. Likewise, there are certain types of content that should or should not be included in rule. Examples of both follow. Those listed below, however, represent the Division of Administrative Rules' interpretation of the *Utah Administrative Rulemaking Act*. They are not exhaustive nor applicable in every case. If a rulemaker is in doubt, legal counsel should be consulted. If the issue remains unclear, usually it is legally safer to enact a rule than to take action with no rule at all. *The Act leaves final judgment of need for a rule to the agency.*

Statutes—obviously are not rules and it is redundant and possibly harmful to repeat them in rules.

Contracts—are not rules; they are a separate form of law.

Personnel, finance, and other procedures regulating other agencies—require rules in general, but not in the detail subject to frequent change. Agencies may provide detailed accounting procedures, forms, tables, and other minutiae in a separate manual referenced in their rules. Rules may spell out all general procedures and describe what and how specific details may be modified from time to time. Agencies must be informed of changes, of course, but for economic and efficiency reasons, every procedural detail need not undergo rulemaking.

Organization Charts—represent internal policy subject to frequent change and are normally not rules.

Office procedures for dealing with the public—are usually internal policies unless they involve granting or denial of a material benefit. A “smile” is not a benefit in this sense.

Federal regulations—must be adopted as state rules if they govern an authorized program and otherwise fit the definition of a state rule. They should be incorporated by reference, but not be repeated in the text of the agency rules. A regulation not yet adopted may not be incorporated by reference in a rule.

Uniform codes—again must be adopted as state rules if they fall within the definition of a rule. They may be incorporated by reference, but may not lawfully incorporate code provisions not yet adopted.

Forms—are not permitted in rules (Section R15-3-4, page 115). However, rules should refer to the requirement of securing the information a form conveys. Rules may refer readers to a specific form, or requiring the completion of a specific form.

Agency orders—are rules only if applied to *all* persons or entities in a class and are *permanent* orders. If the order applies to only one or some individuals, or if it is issued to resolve a temporary or one-time situation, it is not a rule.

Standards—are usually rules.

Charts, diagrams, maps, and other illustrative materials—are not permitted in rules (Section R15-3-4, page 115). They may be described and referenced for clarification in a rule, but must

be kept in a separate source or manual. In appropriate circumstances, they may also be incorporated by reference.

Fee schedules, “required equipment” lists, employee position lists, required check lists, time schedules, and similar documents—generally are not considered rules if subject to frequent revision. However, agency rules must reference them if they may be construed as regulating the public or agencies. In most cases, fees are approved by the Legislature as part of the appropriations act and need not be repeated in rule.

Plans, correspondence, reports, memos, and other communicative and recommending documents—are normally not rules.

Departmental or agency administrative or employee policies—are internal policy. Generally, rules are necessary only when an agency action affects another agency.

Court or agency adjudicative decisions—are not rules but may require a rule be written to incorporate any new principle of law applying to agency standards or procedures.

D. Deciding When to Rulemake

When an agency considers making a rule, it may be helpful to use the following “Decision Tree” to evaluate whether or not a rule is required.

Step A. Is the action explicitly or implicitly authorized by statute, the Utah Constitution, or a court order? If not, it does not require a rule (and the agency probably cannot do it anyway).

Step B. Is the action required and specified in adequate detail in statute? If it is, it does not require a rule because it is already in law. Rules do *not* repeat statutes.

Step C. Does the action authorize, require, or prohibit something? If not, no rule is needed.

Step D. Does the action provide or prohibit some material benefit? (“Material” is here used in the sense of “substantive,” affecting budget, safety, welfare, health, or legal rights.) If not, no rule is necessary.

Step E. Does the action apply to a *class* of persons, governmental entities, or businesses (not just one, or some specific ones), *or* does it apply to one or more other state agencies? If none of the above, no rule is necessary.

Step F. Does the action apply only to management of inmates, patients, students, retirees, or other similar classes of persons in state institutions? If yes, then no rule is necessary.

Step G. Does the action set forth a future course of action, guidelines, principles, or the like which are not specifically enforceable? If so, it is policy and no rule is necessary.

Step H. Does the action apply only to the internal management of the agency? If so, no rule is necessary.

Step I. Is the action merely advisory, informative, or descriptive? If so, no rule is necessary.

Step J. Is the action (1) written in an *agency manual*, and (2) applies only to the *administrative or fiscal details* of other agencies or political subdivisions? If so, no rule is required.

If the agency action is not excepted under one of the above criteria, the agency must make a rule authorizing the action.

E. Assistance with Rules

The Division of Administrative Rules and the Attorney General's Office are statutorily charged with assisting agencies with their rules. However, the *Utah Administrative Rulemaking Act* leaves the final decision and responsibility for rules content to the promulgating agency.

THE RULEMAKING PROCESS

I. WHAT IS THE ORIGIN OF UTAH'S ADMINISTRATIVE RULES PROCESS?

Prior to 1973, state government agencies had collected a hodgepodge of rules, many mandated by statute, others not. Most rules were *ad hoc*, written and “adopted” without set procedures as the need arose. In 1973, Senator Karl Snow and others researched, wrote, and passed through the legislature the *Utah Administrative Rule Making Act* (Title 63, Chapter 46 of the *Utah Code*), borrowed largely from the 1961 Model State Administrative Procedures Act. The purposes of the Utah Act included providing uniform procedures for promulgating rules, creating an administrative code compiling all rules, and giving the State Archivist authority over all rulemaking.

In 1983, legislators who felt some agencies were going beyond their statutory authority in making rules passed H.B. 25 creating the Administrative Rules Review Committee. These amendments to the Act created a permanent legislative committee to review all proposed rules and call upon agencies for explanation when desired. The bill also required agencies to review their rules every five years and justify any they decided to keep.

In late 1984, the State Archivist created the Office of Administrative Rules to oversee rulemaking. A new rules coordinator, with help from legislative staff, the governor's office, and others rewrote the Rulemaking Act to simplify procedures, clarify confusing language, and centralize rulemaking oversight in the new Office. In its 1985 session, the legislature unanimously approved the new *Utah Administrative Rulemaking Act*, Title 63, Chapter 46a.

The Office of Administrative Rules requested revisions to the Act for the 1987 legislative session, this time primarily to provide for creating a new compilation of all rules, the *Utah Administrative Code*, which was enacted on July 1 of that year. The legislature renamed the “Office of Administrative Rules” to the “Division of Administrative Rules.” In 1988, the governor initiated, by executive order, gubernatorial or “executive” review.

II. WHAT IS THE PURPOSE OF THE ADMINISTRATIVE RULEMAKING ACT?

The *Utah Administrative Rulemaking Act* prescribes the procedures all state agencies must follow to enact rules. However, the Act sets only *minimum* standards; agencies may prescribe and use *more elaborate* standards in rulemaking as long as they are consistent with the Act.

First, it is important to point out what the Act (Title 63, Chapter 46a) does NOT do: it does not bestow any authority upon agencies, other than the Division of Administrative Rules, that those agencies do not have already under other statutes or the Utah Constitution. *The Act does not authorize agencies to regulate; it simply requires them to follow certain procedures when they regulate.*

The basic purpose of the Act is to provide uniform standards for making rules which carry out the statutory mandates of the legislature. The Act spells out in some detail who must make rules, when rules are necessary, and what rules are. By specifying rulemaking procedures, the state gains a degree of legal

security against lawsuits charging arbitrary and capricious administrative action or lack of due process—provided, of course, agencies follow the provisions of the Act.

A no less important purpose of the Act is to provide the opportunity for public awareness of, and participation in, administrative rulemaking. The Act mandates public notice for all proposed rules, requires public hearings when interest demands it, and permits petitions to change rules. The Act also spells out public recourse to the courts when administrative remedies do not satisfy public concerns.

In a sense, agencies can use the Act as a “barometer” to measure public opinion of agency action. The segment of the public affected by a rule may have the best sense for assessing the rule’s impact. The Act provides a direct channel of communication between the public and the agency (for example, the *Utah State Bulletin*) and provides the agency a valuable source of information with which to gauge its actions through public comment.

Finally, the Act requires agencies to assess the impact of their rules. By discouraging *ad hoc* rulemaking and requiring a financial impact statement, the Act purposely encourages agencies to “think twice” before either resorting to rules or writing them in an imprecise manner. Every rule must be reviewed within five years’ of its promulgation and the agency must justify the rule’s continuation or repeal it. Conscientious rulemaking may be the supreme benefit of the *Utah Administrative Rulemaking Act*.

III. WHAT IS THE AUTHORITY OF THE DIVISION OF ADMINISTRATIVE RULES?

The 1985 revision of the Rulemaking Act transferred authority over rulemaking from the State Archivist to the Office (later “Division”) of Administrative Rules under the direction of the Department of Administrative Services. In many states, the responsibility for the procedural portion of rulemaking lies with the secretary of state, an office abolished in Utah. In others, the legislative staff controls rulemaking, a responsibility Utah legislators agreed was more appropriately placed in the executive branch. In a few other states, rules oversight resides in an office under the director of administrative services, a place Utah decision makers felt appropriate.

The Act gives the Division authority to administer the *Utah Administrative Rulemaking Act* and “require state agencies to comply with filing, publication, and hearing procedures.” It also requires the Division to establish “all filing, publication, and hearing procedures necessary to make rules under this chapter.” The Act, therefore, limits the Division’s authority to the *procedural* aspects of rulemaking and leaves to the agencies responsibility for the *content* of their rules and the substance of their filings.

Generally, interpretation of the Act is the responsibility of the Division of Administrative Rules. By requiring the Division to make rules to carry out the Act, the legislature granted the Division the same kind of authority to regulate within the Act’s limits as it does to any agency mandated to regulate any other field of governmental operation.

The Act provides one explicit sanction for noncompliance. If an agency fails to review a rule “within five years of the rule’s original effective date or within five years of the filing of the last five-year review . . . ,” the rule expires. The Division is required to remove the expired rule from the *Code*, notify the agency, and publish a notice in the *Bulletin*.

Outside of the five-year review process, there are no explicit sanctions in the Act. Of course, there is a liability for failure to comply with law. Additionally, the Division is charged to administer the Act and “require state agencies to comply with filing, publication, and hearing procedures.” If an agency fails to comply with the provisions of the Act, the Division may refuse to publish in the *Bulletin* or certify and include in the *Utah Administrative Code* any improperly filed or enacted rule. In any conflict over the Division’s interpretation, however, agencies would have recourse to an attorney general’s opinion.

The Division of Administrative Rules may not base a decision to certify rules for publication or codification on the basis of their content. The Division has no knowledge of agency needs and its authority is limited to *advice* on what is or is not properly in an administrative rule.

IV. WHAT ARE THE PROCEDURES FOR PROMULGATING RULES?

The *Utah Administrative Rulemaking Act* provides for nine different types of rulemaking actions:

- Proposed Rules;
- Changes in Proposed Rules;
- 120-Day (Emergency) Rules;
- Nonsubstantive Changes;
- Five-Year Notice of Review and Statement of Continuation;
- Five-Year Review Extensions;
- Five-Year Review Expirations;
- Legislative Expirations; and
- Governor’s Extensions.

Each type of rulemaking action fills a specific purpose. The table below gives a quick summary of the type of action appropriate for specific circumstances.

IF YOU NEED TO . . .	THEN, FILE A . . .
promulgate a new rule	Proposed Rule (New) (see page 16)
amend an existing rule making changes that affect the application or results of agency action (substantive)	Proposed Rule (Amendment)
remove an obsolete or otherwise unnecessary rule from the <i>Utah Administrative Code</i>	Proposed Rule (Repeal)
completely rewrite an existing rule	Proposed Rule (Repeal and Reenact)
make changes to a proposed rule (not yet effective) in response to public comment or new information	Change in Proposed Rule (see page 23)
promulgate a rule in response to an emergency where procedures required for regular rulemaking would: (a) cause an imminent peril to the public health, safety, or welfare; (b) cause an imminent budget reduction because of budget restraints or federal requirements; or (c) place the agency in violation of federal or state law	120-Day (Emergency) Rule (see page 26)

IF YOU NEED TO . . .	THEN, FILE A . . .
correct typographical or grammatical errors in a proposed or existing rule; or make minor wording changes that do not affect the substance of the rule	Nonsubstantive Change (see page 25)
continue a rule that has been on the books for up to five years	Five-Year Notice of Review and Statement of Continuation (see page 29)
have more time (up to 120 days) to comply with the five-year review requirements	Five-Year Review Extension (see page 30)

The other rulemaking actions are prepared by the Division to document action (or inaction) by agencies, the legislature, or the governor.

WHEN . . .	THEN, THE DIVISION RECORDS AN . . .
an agency fails to file a Five-Year Review by a rule's anniversary date or by the end of the extension	Expired Rule (Five-Year Review)
the legislature does not reauthorize a rule, and the governor does not extend it	Expired Rule (Legislature)
the governor issues a declaration extending a rule that the legislature had not reauthorized	Extension (Governor)

Each of the six agency-initiated rulemaking actions is discussed in the remaining pages of this chapter and is also summarized as part of the “Rulemaking Process (Flow Charts),” Appendix F, beginning on page [125](#).

A. Regular Rulemaking Process—Filing a Proposed Rule

1. Creating and Maintaining an Administrative Record

An administrative record documents the development of an administrative rule. It contains “copies of the proposed rule, change in proposed rule, and the rule analysis form[s]; the public comment received and recorded by the agency during the public comment period, the agency’s response to the public comment; the agency’s analysis of the public comment; and the agency’s report of its decision-making process.” An agency may also include other items (for example, mailing lists of persons notified of the rulemaking action) that it believes will strengthen the foundation upon which the rule is based.

If a rule is challenged in court, the agency files the administrative record of the rule as part of its responsive pleading. Among other actions, a court may invalidate a rule that is “not supported by substantial evidence when viewed in light of the whole administrative record.” Therefore, the administrative record becomes a critical support for an agency’s actions.

2. Involving the Public in the Development of a Rule

In 1997, the legislature passed and the governor signed H.C.R. 2 encouraging regulatory agencies to develop rules in partnership with interested parties. In 1998, the legislature required agencies to “develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency’s rules” (see Section 63-46a-4(2)). This language leaves the determination of what methods will work best to the agency. The agency may want to consider using one or more of the methods listed below or other methods it devises to involve the public:

- publish an agenda of anticipated rulemaking activity for the coming year in the *Bulletin*;
- publish a notice of intention to make rules on a specific topic and invite participation;
- conduct a prefiling hearing on a rule prior to drafting to discuss possible approaches;
- create an *ad hoc* committee to advise the agency as it progresses through the rule drafting process; or
- develop the rule using a negotiated rulemaking model from the federal government or another state.

3. Preparing a Proposed Rule

Upon deciding to promulgate, amend, or repeal a rule, the rulewriter must prepare a copy of the rule to file with the Division of Administrative Rules. When amending or repealing an existing rule, the rulewriter should obtain the official text of the existing rule from the Division. The Act requires an agency to mark proposed additions in a rule to be underlined, and proposed deletions to be struck-out and bracketed just as in a legislative bill. If an agency proposes an entire new rule or section, it must be underlined throughout. If an agency proposes to repeal an entire rule, it must be struck-out throughout and the strike-out must begin with an open bracket and end with a close bracket. In all other cases, the agency must carefully underline all added words and punctuation, and strike-out and bracket all deleted words and punctuation. Changes that are not marked will not be identified during the codification process and will not be inserted into the *Administrative Code* (See Subsection R15-4-9(4), page 117).

R156-54-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 54, as used in Title 58, Chapters 1 and 54 or these rules:

- (1) [~~“ARCRT” means American Registry of Clinical Radiologic Technologists.~~]
- ~~—(2) “ARRT” means the American Registry of Radiological Technologists.~~
- (2) “Supervision”, “general supervision” or “direct supervision” as used in Subsections 58-54-2(5), (6) and (7) and Section 58-54-8 means that the supervising radiologist or radiology practitioner shall be available for consultation while the radiology technologist or the radiology practical technician is performing any radiographic procedures. Consultation may be in person, by telephone, by radio or any other means of direct verbal communication. The supervising radiologist or radiology practitioner shall be responsible for the radiographic procedures performed by the radiology technologist or the radiology practical technician.
- (3) “Unprofessional conduct” as defined in Title 58, Chapters 1 and 54, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-54-502.
- ~~—(3) “CAHEA” means the AMA Committee on Allied Health Education and Accreditation.~~
- ~~—(4) “Chest” means the thorax.~~
- ~~—(5) “CNMT” means the Certified Nuclear Medical Technologists.]~~

<p>R590-177-11. Annual Certifications.</p> <p>A. The board of directors of each insurer shall appoint one or more illustration actuaries.</p> <p>B. The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the "Actuarial Standard of Practice No. 24 for Compliance with the NAIC [Model Rule on Life Insurance Illustrations Model Regulation Adopted/promulgated] by the Actuarial Standards Board," and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this rule. <u>The Actuarial Standard of Practice may be obtained from the Insurance Department, the NAIC or the Actuarial Standards Board.</u></p>	<p>R414. Health, Health Care Financing, Coverage and Reimbursement Policy.</p> <p>[R414-16. Preadmission and Continued Stay Review Policy and Procedures Manual.</p> <p>R414-16-1:</p> <p>Three working days are allowed for mailing of the "Patient Care Transmittal" (Form 10A) following immediate patient/resident placement as authorized by telephone by The Patient Assessment Section.</p> <p>KEY: medicaid</p> <p>1987</p> <p>Notice of Continuation 1992]</p> <p style="text-align: right;">26-1-5</p>
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In preparing the text of a rule, it is important to remember that once the text has been filed as one rulemaking action, the agency cannot later decide to make some of the changes effective and let others lapse. In this process, *it's all or nothing*. If there is a chance that some rule changes are so controversial that the agency may decide not to make them effective, but must have other changes go into effect, it is best to submit each set of changes with a separate rule analysis.

4. Preparing the Rule Analysis

The rulewriter must also fill out a "rule analysis" (see Appendix G, page [131](#)), one for each rule filed, providing *all* required information including the cost impact of the proposed change. Failure to fill in all the blanks may result in the return of the rule to the agency for correction and the consequent delay in enacting the rule. Step-by-step instructions for completing the rule analysis form are include in Appendix G.

While all of the information required in the rule analysis is important, agencies need to take special care in responding to questions regarding costs associated with a proposed rule. Legislators and members of the business community are scrutinizing the costs an agency anticipates for its rules more than ever before. The Act requires the agency to include in its rule analysis the anticipated cost or savings to the state budget, local governments, and other persons; compliance costs for affected persons; and comments by the department head on the fiscal impact the rule may have on businesses. Section R15-4-10 (July 1, 1998) establishes a minimum level of information that agencies must provide when responding to these questions. If this, or other information required by the Act, is incomplete, the Division may refuse to publish the rule in the *Bulletin* until the deficiencies are corrected. If a rulewriter has questions about the adequacy of a response, the rulewriter may consult with Division staff.

5. Filing the Rule

Keeping a copy, the agency E-mails to the Division ("Rules" or "asdomain.asitmain.rules"):

- ☐ a completed "Notice of Proposed Rule or Change" form in WordPerfect format (see page [131](#)); and

□ the text of the proposed rule marked to show additions underlined, and deletions struck-out and surrounded by brackets in WordPerfect 5.x/6.x/7.x format.

a. Using E-mail to File a Rule

In 1994, the Division began permitting agencies to file rules using E-mail. While this is a convenience most agencies have eagerly accepted, it is not without risk. As with the old paper rulemaking process, it remains the responsibility of the rulewriting agency to *deliver* all documents pertaining to a rule or change to the Division. With E-mail, rulewriters would be well-advised to remember that “*sent*” is not the same as “*delivered*” or “*received*.” In one instance the Division is aware of, it took almost four weeks (or two *Bulletin* cycles) for an E-mail message to travel from a department in the Heber Wells Building to the Division. *The Division is not responsible for documents it does not receive because of faulty computer network connections, or E-mail problems.*

The Division offers the following suggestions to help rulewriters ensure that the Division receives rules.

- Do not wait until the last minute to file a rule (see “Rulemaking Time Frames,” page [145](#), for filing deadline dates and times).
- If a rule must be filed on a deadline day, change the E-mail message send priority (found under “Properties”) to “high.”
- **MOST IMPORTANTLY**—Watch for an E-mail reply from “Administrative Rules.” When an E-mail message arrives in the “Rules” mailbox, an automatic reply is sent back to the person who sent the E-mail. This reply verifies that the Division received the rule or change. If a reply does not arrive within a relatively short period after the rule was filed, contact the Division’s Publications Editor (801-538-3218).
- Feel free to call the Division’s Publications Editor (801-538-3218) and ask if your E-mail arrived.
- If the E-mail system goes down, a rulewriter may FAX the rulemaking form and the rule text to the Division (801-538-1773) *before* the filing deadline. Then, within 24 hours, deliver the electronic version to the Division.
- Finally, if the convenience E-mail offers is still not worth the stress, the Division will also accept a rule or change on diskette.

b. The Rule Text

The rule text must be in the format required in order to avoid delays in publication or the loss of information. Formatting is discussed in detail beginning on page [84](#).

The electronic (WordPerfect) version of the rule or change is the official version. The electronic version is used to produce the *Utah State Bulletin*—the text that is published and distributed to provide public notice and solicit public comment.

If amendments are limited to one or more sections—less than the entire rule—only those sections amended need be sent. The Division checks the rule for proper format and the rule analysis for complete information, records the date and time of filing, and registers the rule. The proposed rule has then been officially filed.

c. After Publication

After the proposed rule is recorded and published, the Division's Publications Editor E-mails back to the agency a copy of the rule analysis form along with a copy of the text the Division used in preparing the *Bulletin*, noting the time received and the person at the Division who recorded the rule or change. This copy should become part of the agency's official, permanent record of its rulemaking action.

6. Providing Public Notice

The Act spells out two things an agency must do to provide public notice. First, the agency must file the rule with the Division for publication in the *Utah State Bulletin*.

Second, the agency must provide a copy of the rule analysis to three categories of persons:

- (1) "all persons who have made timely request of the agency for advance notice of its rulemaking proceedings";
- (2) any person who the agency is required to notify under statutory or federal mandate; and
- (3) any person who, "in the judgment of the agency, should also receive notice."

While an agency may provide as much additional information to the public as it desires or can afford, the minimum notice an agency must provide to these categories of persons is a copy of the rule analysis. The Division has tried to make the rule analysis more reader-friendly. However, an agency may be well-advised to attach a cover memo to the rule analysis to explain why the notice is being sent, and who to contact with questions or comments.

Specific agency or program statutes may require the agency to provide additional notice—publication in a newspaper or trade journal, or other kinds of notice not specified in the Rulemaking Act. For example, federal regulations require some environmental programs to publish a notice in newspapers circulated in the area that the rule will affect. The agency needs to make sure that all public notice requirements are followed.

7. Publication of the Proposed Rule

The Division of Administrative Rules publishes the information from the Notice of Proposed Rule or Change rule analysis and, usually, the complete text in the *Utah State Bulletin*, issued the first and fifteenth of each month. In cases where a rule text is too long to fit within the contracted page limits of the *Bulletin*, only the rule analysis information is published. The *Bulletin* goes to all major state repository libraries and may also be obtained by subscription. An electronic version of *Bulletin* is also posted to the Division's Internet site—<http://www.rules.state.ut.us/>.

The Division also publishes a summary of all proposed rules in the *Utah State Digest*. The Division distributes the *Digest* to legislators, many state agencies, many state subdivisions and private subscribers, as well as posting it to the Internet.

The filing deadlines for publication are the first (for the issue dated the fifteenth) and the fifteenth (for the issue dated the first) of each month. If the first or fifteenth falls on a Saturday,

or a Tuesday, Wednesday, Thursday, or Friday holiday, the filing deadline is the previous regular business day. If the first or fifteenth falls on a Sunday or Monday holiday, the filing deadline is the next regular business day. Filing deadlines (including times) and associated dates are summarized in “Rulemaking Time Frames,” Appendix I, page [145](#).

8. The Public Comment Period

The Act requires a minimum public comment period of 30 days after the date the proposed rule is published in the *Utah State Bulletin* (the first or fifteenth of the month) before the agency can make a proposed rule effective and the agency can act under it. For example, if an agency rule on oil well drilling standards appeared in the July 1 *Bulletin*, the agency would be required to accept comment through July 31. It could not make the standards effective and begin enforcement until August 1. If the last day of the comment period (July 31) fell on a weekend or holiday, the agency would have to accept comment through the end of the next business day.

During the public comment period, the agency may receive verbal or written (including E-mail) comment on the proposed rule and may hold a public hearing on the proposal. The agency maintains records of any hearing, written comments (including E-mail comments), and notes on verbal comments in the administrative record (see page [16](#)) with a copy of the proposed rule at the agency office. The Act requires the agency and the Division to keep a copy of the proposed rule available for public inspection during regular business hours throughout the comment period.

Agencies are required to *consider* public comment they receive on a proposed rule. However, agencies are *not required* to change their proposed rules as a result of public input, but may do so.

9. Holding an Administrative Rule Hearing

Agencies *may* hold hearings on proposed rules before filing the rule with the Division or during the comment period. Federal regulations and other state statutes may require some agencies to hold hearings for some rules. The Rulemaking Act *requires* a hearing if ten persons, or an association with at least ten members, requests it in writing. If the agency receives the request more than 15 days after publication of the proposed rule in the *Bulletin*, the hearing is not required, but, if for no other reason than good public relations, an agency may hold a hearing anyway. A requested hearing must be held no less than seven days after and within 30 days of agency’s receipt of the request. The hearing must be held before the rule becomes effective.

Voluntary hearings are publicized by notice on the rule analysis in the *Bulletin*, and any other method the agency chooses. Required hearings under the Rulemaking Act do not contemplate additional notice, although an agency may opt to provide it. If the agency chooses to and time allows, the agency may prepare a public hearing notice for publication in the next issue of the *Bulletin*.

A rulemaking administrative hearing should not be confused with an adjudicative administrative hearing. The latter requires a controversy (or conflict) between two parties, frequently between an agency and an individual or business, on a decision to grant or deny some authority or right,

such as a license or welfare benefit. Adjudicative hearings are governed by the *Administrative Procedures Act*, Title 63, Chapter 46b, provided in full text in Appendix B (page [103](#)).

Rulemaking hearings are similar to hearings held by the legislature, allowing the public to comment on a proposed rule or change. The agency—like the legislature—is not compelled to act according to testimony. In an adjudicative hearing, the agency acts according to the weight of evidence.

Mandatory (petitioned or otherwise required by law) rulemaking hearings follow the procedures established by the Division of Administrative Rules (see Rule R15-1 in Appendix C, page [113](#)). Agencies holding rulemaking hearings voluntarily may proceed under their own rules or may use the Division's procedure. In either case, the proceeding should be an informal, relaxed, non-adversarial exchange of information meant to enlighten both the agency and the attending public.

10. Making a Proposed Rule Effective

After the comment period ends, on or shortly before the date the agency wants the proposed rule to go into effect, the rulemaker E-mails to the Division ("Rules" or "asdomain.asitmain.rules"):

- a completed "Notice of Effective Date" form in WordPerfect format (see page [134](#)) with the effective date typed in box 6.

An agency is under certain limitations as far as when it may make a rule or change effective. The designated effective date must be *no fewer than 31 nor more than 120 days* after the proposed rule appeared in the *Bulletin*. Additionally, the effective notice *must be received* by the Division of Administrative Rules on or before the effective date. For the purposes of the example given on page [21](#), the agency might decide September 1 is the best effective date for the oil well standards. Since this is fewer than 120 and not fewer than 31 days after July 1, the date is permissible. Ideally, the agency would E-mail the effective notice to the Division a day or two prior to or on September 1.

During the 1991 session, the legislature amended the Act to require agencies to give notice of the date the rule or amendment "may" become effective. While the agency is not bound to make the rule effective on the date selected, the effective date should conform to it unless some overriding circumstance requires a different date. Even if the effective date is the same as the "may become effective" date, the Division must still receive a "Notice of Effective Date" for the rule to be enforceable. The Division publishes a brief notice of the effective date in the next issue of the *Bulletin*.

The Division of Administrative Rules does not set any effective dates. If no notice is received within 120 days from the date of publication of the proposed rule in the *Bulletin*, the Division will assume the agency decided not to make the rule effective and record it officially as lapsed. After a rule or change lapses, the agency must refile the proposed rule—going through the publication and comment process again—before the rule may be enforced.

11. Recording and Codifying a Proposed Rule

The Division keeps a permanent record of materials submitted for rulemaking. The Division also keeps a register (like a docket) of all proposed rules and records the date (if any) they

become effective. Finally, on or shortly after the effective date of the rule or change, the Division codifies the proposed rule.

Codification involves (1) verifying that the text provided by the agency accurately reflected all changes to the rule text, and (2) inserting the revised text into the Code. If, during codification, the Administrative Code Editor discovers that text was not marked as required by statute (additions underlined, deletions struck out and surrounded by brackets), the editor codifies only the changes that were correctly marked, and notifies the agency of the unmarked changes. Upon codification, the change becomes an official part of the *Utah Administrative Code*. Shortly after codification, the editor E-mails a copy of the revised rule to the agency contact person.

12. Changing a Proposed Rule

The Rulemaking Act contemplates agencies enacting rules as proposed, not rules in which last-minute changes have been made on which the public has had no opportunity to comment. On the other hand, there is no point in having public comment unless an agency may change its proposal as a result of that comment.

The Act strikes a balance by making special provision for changing proposed rules after they have been published. The procedure only affects rules changed after their appearance in the *Bulletin*. (The Division estimates that over 8% of all proposed rules are changed after publication.) If an agency anticipates changes because of a hearing or other public input, it may consider holding the hearing and inviting comment *before* entering the formal rulemaking process.

Preparing the text for a change in proposed rule is somewhat different from what one may expect. Unlike amendments to a bill, underlining and strike-out is used to show only those additional changes being proposed since the proposed rule was published. [Figure 2](#) provides an example.

If an agency decides to change a proposed rule after publication in the *Bulletin*, the rulemaker E-mails to the Division (“Rules” or “asdomain.asitmain.rules”):

- ☐ a completed “Notice of Proposed Rule or Change” form in WordPerfect format (see page [131](#)) indicating in box 3 that the action is a Change in Proposed Rule; and
- ☐ the text of the proposed rule marked to show only the changes made since the proposed rule was published—as always, additions underlined, and deletions struck-out and surrounded by brackets in WordPerfect 5.x/6.x/7.x format.

The Division will publish the change in proposed rule in the next *Bulletin*. The agency must then submit a Notice of Effective Date, as described on page [22](#), to the Division. The agency types an “X” next to “Change in proposed rule” in box 3 and also provides the “DAR file no.” (see page [134](#)). The change in proposed rule may be made effective 31 to 120 days after its publication date. When a change in proposed rule is made effective, the proposed rule upon which it is based also becomes effective. Likewise, if the agency fails to notify the Division of an effective date for a change in proposed rule, the change *and* the proposed rule upon which it is based lapse. A flow chart of this process is found on page [126](#).

Figure 2

Preparing the Text for a Change in Proposed Rule

PROPOSED RULE	CHANGE IN PROPOSED RULE	CODIFIED RULE
<p><u>R311-206-2. Declaration of Financial Assurance Mechanism.</u></p> <p>(a) To demonstrate financial assurance, as required by Section R311-202-1, subpart H, owners and operators of petroleum storage tanks shall:</p> <p>(1) meet all requirements for participation in the environmental assurance program, or</p> <p>(2) demonstrate financial assurance by an allowable method specified in Section R311-202-1, subpart H.</p>	<p>R311-206-2. Declaration of Financial Assurance Mechanism.</p> <p>(a) To demonstrate financial assurance, as required by Section R311-202-1 40 CFR 280, subpart H, owners and operators of petroleum storage tanks shall:</p> <p>(1) meet all requirements for participation in the environmental assurance program, or</p> <p>(2) demonstrate financial assurance by an allowable method specified in Section R311-202-1 40 CFR 280, subpart H.</p>	<p>R311-206-2. Declaration of Financial Assurance Mechanism.</p> <p>(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners and operators of petroleum storage tanks shall:</p> <p>(1) meet all requirements for participation in the environmental assurance program, or</p> <p>(2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.</p>
<p><u>R311-206-[3]6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program[to the Petroleum Storage Tank Fund].</u></p> <p>(a) Owners or operators of eligible exempt underground storage tanks specified in 19-6-415(1)(a) may voluntarily participate in the Petroleum Storage Tank Fund Environmental Assurance Program by:</p> <p>(1) meeting the requirements of Section 19-6-415(1) and Section R311-206-[2]3(b), and</p> <p>(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D adopted by Section R311-202[-], and</p> <p>(3) meeting the upgrade requirements in R311-202-1 subpart 280.21 or the new tank requirements in R311-202-1 subpart 280.20, as applicable.</p> <p>(DAR File No 19105, Utah Bull. 97-11 (June 1, 1997), 58-62.)</p>	<p>R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.</p> <p>(a) Owners or operators of eligible exempt underground storage tanks specified in 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:</p> <p>(1) meeting the requirements of Section 19-6-415(1) and Section R311-206-3(b),</p> <p>(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D[adopted by Section R311-202], and</p> <p>(3) meeting the upgrade requirements in R311-202-1 40 CFR 280, subpart 280.21 or the new tank requirements in R311-202-1 40 CFR 280, subpart 280.20, as applicable.</p> <p>(DAR File No 19105, Utah Bull. 97-15 (August 1, 1997), 83-87.)</p>	<p>R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.</p> <p>(a) Owners or operators of eligible exempt underground storage tanks specified in 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:</p> <p>(1) meeting the requirements of Section 19-6-415(1) and Section R311-206-3(b),</p> <p>(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D, and</p> <p>(3) meeting the upgrade requirements in 40 CFR 280, subpart 280.21 or the new tank requirements in 40 CFR 280, subpart 280.20, as applicable.</p> <p>Utah Admin. Code Rule R311-206 (October 1, 1997)</p>

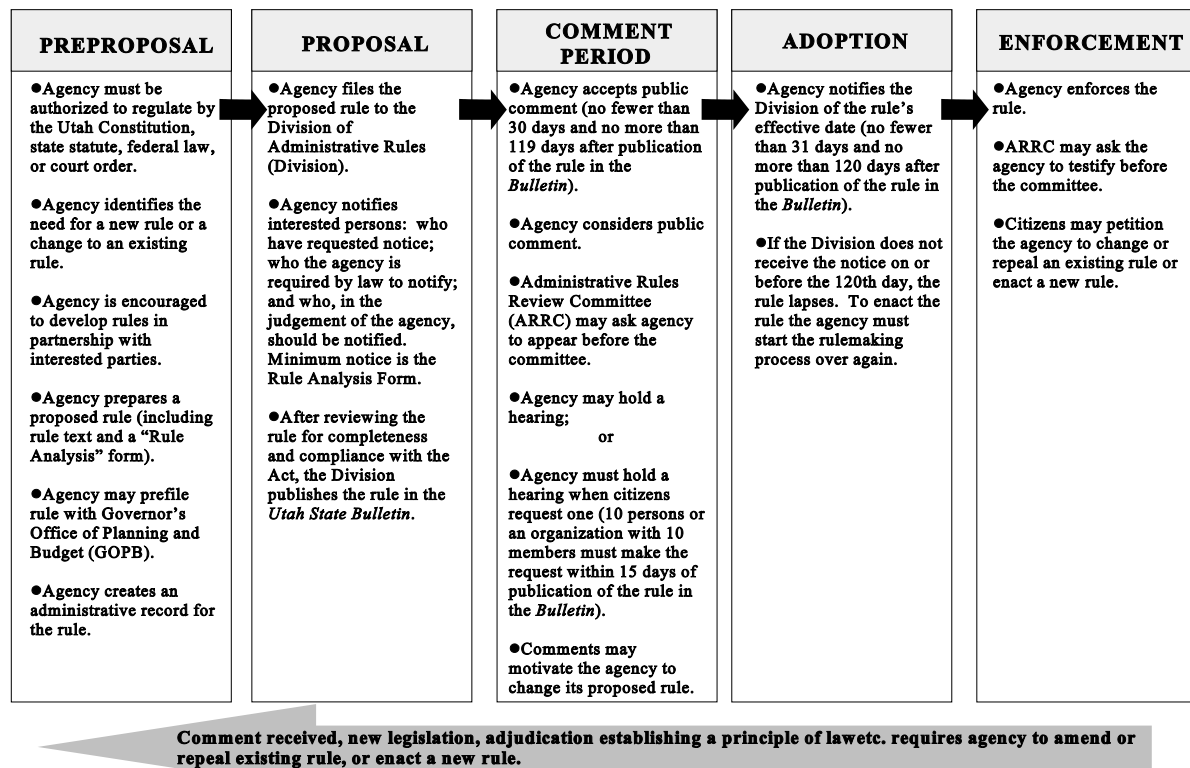
An agency has two alternatives to filing a change in proposed rule. An agency may allow its original proposal to lapse and file a new proposal that incorporates the new changes. Or, an agency may make its original proposal effective and file a new proposed rule to amend the rule to add the new changes. The method an agency uses depends upon the agency's needs and the time constraints under which it is working.

13. A Proposed Rule—a Summary

In summary, the proposed rule process is simple and straightforward requiring actions by the agency and the Division, and encouraging public participation. [Figure 3](#) summaries those actions.

Figure 3

“Utah Administrative Rulemaking Process: A Summary of the Path a Proposed Rule* Takes”



NOTE: “Agency” means “each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligation, or perform other similar actions or duties delegated by law.” Subsection 63-46a-2(2).

* A proposed rule is the most common type of rule filing. The requirements for other types of filings (120-Day (Emergency) Rules, Five-Year Reviews and Extensions, etc.) vary.

B. Nonsubstantive Changes

Minor changes in wording, grammar, punctuation, references, agency name, or numbering which do not affect the application or results of agency actions under the rule do not require the complete rulemaking procedure. Any time an agency wants to make minor, nonsubstantive changes in either a proposed rule or an existing rule it may do so by filing a nonsubstantive change. A nonsubstantive change is also used when an agency wants to renumber—or move—a rule, section, or subsection from one portion of the *Utah Administrative Code* to another.

To make a nonsubstantive change, the agency E-mails to the Division (“Rules” or “asdomain.asitmain.rules”):

- ☐ a completed Nonsubstantive Change form in WordPerfect format (see page 138); and
- ☐ the text of the rule marked to show changes with additions underlined, and deletions struck-out and surrounded by brackets in WordPerfect 5.x/6.x/7.x format.

“Substantive change” is defined in the Rulemaking Act (Subsection 63-46a-2(16), page [93](#)) as a “change in a rule that affects the application or results of agency action.” Short of a court, the agency is the final judge of whether its case fits this definition or it can be filed as a nonsubstantive change.

Shortly after a nonsubstantive change is filed with the Division, the Division E-mails a copy to the Governor’s Office of Planning and Budget (GOPB). The GOPB Rules Analyst reviews the change, verifying that the changes are, in fact, nonsubstantive. If the analyst has any doubts about the nature of the changes, the analyst contacts the agency directly. After the analyst notifies the Division that the change is nonsubstantive, the changes become effective and are codified into the *Utah Administrative Code*. The effective date for nonsubstantive changes are published in the index included in the back of most *Utah State Bulletin* issues. A flow chart of this process is found on page [128](#).

C. 120-Day (Emergency) Rules

Frequently, a federal or statutory deadline, an imminent budget change with the new fiscal year, a natural disaster, or some other emergency situation beyond the control of the agency will require immediate implementation of a rule. The Act anticipates such possibilities by permitting agencies to enact immediate, temporary, “120-day rules.” This allows the agency to meet emergency needs and gives ample time for enacting a permanent version of the rule if desired. Since timing is typically the critical factor, if an agency has more than 46 days to implement a rule, an emergency rule may not be necessary—the agency can comply with regular rulemaking procedures.

To enact a 120-Day (Emergency) Rule, the agency E-mails to the Division (“Rules” or “asdomain.asitmain.rules”):

- ☐ a completed “Notice of 120-Day (Emergency) Rule” form in WordPerfect format (see page [135](#)); and
- ☐ the text of the proposed rule marked to show additions underlined, and deletions struck-out and surrounded by brackets in WordPerfect 5.x/6.x/7.x format.

The agency must notify interested parties just as it would under regular rulemaking. The rule becomes effective upon filing with the Division or on any later date the agency designates on the form. The Division publishes the information from the form and rule in the next issue of the *Bulletin* under the heading “120-Day (Emergency) Rules.” The emergency rule is *not* made part of the *Utah Administrative Code*, and it expires automatically: (1) 120 days after its effective date; (2) on an earlier date designated by the agency; or (3) when replaced by a permanent version of the rule. A flow chart of this process is found on page [127](#).

1. Criteria for 120-Day (Emergency) Rules

Section 63-46a-7 (see page [96](#)) authorizes an agency to promulgate a 120-Day (Emergency) Rule only if regular rulemaking would:

- cause imminent peril to public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal law or regulations, or other state law.

On the rule analysis form, the agency must indicate which of these three criteria is satisfied (one, two, or all three may be checked). The agency must then justify in detailed terms the use of the emergency rule process instead of the regular process.

In practical terms this means an agency may enact a 120-day rule if necessary to meet any state or federal program deadline or set up a newly-budgeted program before the start of a fiscal year. Often, however, an “emergency” exists only because an agency has neglected regular rulemaking until it no longer has time to do so before a deadline. The Attorney General’s Office issued a memorandum (10/19/89) indicating that a 120-day rule would be held invalid by a court if it were the agency itself that caused the “emergency.”

2. Making an Emergency Rule Effective Beyond 120 Days

An agency may make an emergency rule “permanent” (effective beyond 120 days) by initiating regular rulemaking procedures. A separate rule analysis form and copy of the rule are required because, under the statute, the Division treats the permanent rule as a separate action from the emergency rule. Regular rulemaking may begin before, concurrent with, or after the agency files the 120-Day rule. The temporary rule will automatically expire the day the permanent version becomes effective.

The Act prohibits an agency from filing subsequent, duplicate 120-Day rules to extend the effect of an emergency rule. Under the language of the statute, filing a duplicate emergency rule can only be justified if a new emergency arises.

V. WHAT IS THE GOVERNOR’S ROLE?

The governor directs administrative functions of executive branch agencies and has final authority over administrative rules. By Executive Order (dated March 22, 1988—see page [122](#)), the governor established a gubernatorial review procedure for state agencies. The following Internal Policy/Procedure was issued by the Governor’s Office of Planning and Budget (OPB in the following policy) June 14, 1988, which outlined the governor’s review function. It states:

The Office of Planning and Budget (OPB) has been assigned to conduct an Executive Review of Administrative Rules. OPB will coordinate with and assist departments and agencies in promulgating rules. OPB will act as liaison between departments and the Legislative Administrative Rules Review Committee on issues raised by committee members. Efforts will be made to avoid the layering of government or the lengthening of current procedure. The following guidelines will generally apply, and may be updated as conditions change.

A. Pre-Filing Procedure

- 1- OPB is to obtain information from departments at the onset of rule drafting, to analyze and gain input about the reasons and objectives of proposed rules. Issues involving legal, policy, and fiscal aspects of proposed rules will be closely reviewed by OPB.
- 2- Agencies are encouraged to pre-file rules in draft form to OPB, especially when fiscal, policy, and legal issues may need resolution. When a rule is submitted to the Division of Administrative Rules, a separate copy will be sent to OPB. That copy will include the rule, the rule analysis form, and a copy of each department’s check-list (based on the procedure requested by the Governor’s Executive Order of March 22, 1988).

B. Issue Resolution Procedure

- 3- Where rules have been pre-filed on a timely basis, OPB is to notify agencies of concerns prior to the publishing of the rule in the State Bulletin. If rules are not pre-filed, concerns or problems may delay implementation. In any event, OPB will provide feedback to departments as quickly as possible.
- 4- OPB's objective will be to resolve concerns about new rules directly with agency personnel. Where fundamental differences continue to exist, OPB and the involved agency will resolve any differences with the Governor's office.

C. Legislative Review Procedure

- 5- Prior to legislative rules review committee meetings, OPB may meet with department administrators and coordinate the presentation of testimony by department personnel to assure that all relevant and pertinent issues are clearly and accurately represented. OPB staff will also provide information to committee members upon request, and coordinate rule analysis with departments and agencies.
- 6- OPB will exchange pertinent information with the staff of the Office of [Legislative] Research and General Counsel and the Division of Administrative Rules, and coordinate any concerns with those entities as appropriate.

VI. WHAT ELSE DOES THE RULEMAKING ACT REQUIRE?

A. Legislative Review

The *Act* creates a permanent legislative Administrative Rules Review Committee (ARRC) to oversee the execution of legislative mandates through the rulemaking process. The committee typically meets twice monthly. It discusses proposed and effective rules brought to its attention by its members, its staff, other legislators, or the public. The Act requires the Division of Administrative Rules to provide copies of the *Utah State Bulletin* to ARRC members and staff, and copies of the *Utah State Digest* to other legislators and legislative staff, allowing the legislature to track each agency's rulemaking activity.

When the ARRC was established in 1983, it consisted of six legislators. In 1997, as a result of H.B. 182, the ARRC was expanded to ten legislators—five senators and five representatives, six from the majority party and four from the minority.

A 1988 amendment to the Act expanded legislative review by adding members to the ARRC whenever *existing* rules are reviewed. Joining the committee as non-voting members are the four co-chairmen of the standing committee and the appropriations subcommittee overseeing the agency whose rules are at issue. The purpose of the expansion is to inform legislators who have expertise in the subject matter and responsibility for the agency's functions and budget.

Agency representatives may be asked to appear before the ARRC to answer questions or explain a rule. The ARRC staff notifies an agency of its findings with regard to a rule on its agenda. The agency is requested to respond if it has made any changes in the rule pursuant to committee or other suggestions.

Legislative committees have no *direct* power to delay or change an administrative rule. Rulemaking is the delegated, or constitutional, lawmaking power of the executive branch. However, the ARRC can report its findings to the legislature which may amend, revoke, or otherwise change an agency's authority if the body finds such action justifiable. While some agencies may find legislative scrutiny irritating,

the wise administrator understands that the legislature is ultimately responsible for nearly all government restrictions and impositions on the people, and that includes administrative rules.

B. The Annual Reauthorization of Administrative Rules

In 1989, a new tool for the Administrative Rules Review Committee was added to Utah rulemaking by H.B. 408 and amended by S.B. 86 in 1998. These bills provided that all administrative rules in effect on February 28 expire on May 1 each year unless reauthorized by the legislature. During each general session, the ARRC files a bill reauthorizing all rules except any listed as “not reauthorized.” The bill may except for reauthorization an entire rule, a single section of a rule, or any complete paragraph of a rule. Agencies whose rules are listed as not reauthorized have the opportunity to respond before passage of the bill. If the reauthorization bill fails to pass, the governor may reauthorize all rules by publishing a notice in the *Bulletin*. Furthermore, the governor may also reauthorize any rule the legislature fails to reauthorize by publishing his reasons in the April 15 issue of the *Bulletin*. (In effect, the governor may override the legislature’s veto of a rule!)

Exempted from the May 1 expiration are all rules explicitly mandated by federal law or regulation, or rules founded on a provision of Utah’s constitution that vests the agency with specific constitutional authority to regulate. For this reason, it is important that rulewriters declare upon filing a rule whether the rule would be exempt under this provision by citing federal or constitutional authorization for the rule on the rule analysis and at the end of the rule.

This reauthorization scheme has been controversial, but it has not been constitutionally tested in the courts. Nonetheless, it stands in Utah law as a modest form of legislative veto of executive branch rulemaking.

C. Five-Year Review of Rules by the Agency

The Rulemaking Act requires an agency to review each of its administrative rules within five years of the rule’s original effective date or last five-year review. To retain a rule as part of the *Utah Administrative Code*, an agency must also file a “Five-Year Notice of Review and Statement of Continuation” before the rules anniversary date. Upon reviewing a rule, an agency may repeal or amend it using regular rulemaking procedures. If the agency decides to amend the rule or continue the rule in its existing form, it must file a Five-Year Notice of Review and Statement of Continuation (see form facsimile on page [137](#)) with the Division citing the rule and providing:

- a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
- a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
- a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

After filing, the Division will publish the notice in a subsequent edition of the *Bulletin* under the heading “Five-Year Review.” The Act gives the Division authority to schedule the publication of review notices up to a year after the rule’s anniversary date. A flow chart of this process is found on page [129](#).

The purpose of the review is to remind agencies to amend or repeal rules that are archaic in form, are no longer used, for which statutory authority no longer exists, or are otherwise unnecessary. Administrative rules impose enough of a burden to administrators and the public alike without obsolete rules further encumbering the system.

1. Notice of Rules Due for Review

On a quarterly basis, the Division sends notices providing agencies at least 180 days advanced notice of rules due for review. The notice indicates when a rule was originally promulgated or last reviewed, and the date by which the agency must file a Five-Year Notice of Review and Statement of Continuation.

2. Filing a Five-Year Notice of Review and Statement of Continuation

To comply with the five-year review requirement, an agency E-mails to the Division (“Rules” or “asdomain.asitmain.rules”):

- ☐ a completed Five-Year Notice of Review and Statement of Continuation form (see page [137](#))

A Five-Year Notice of Review and Statement of Continuation may be filed any time “within five years of rule’s original effective date or within five years of the filing of the last five-year review, which ever is later.” An agency that submits rules once every two or three years may want to consider filing the five-year review at the same time. Likewise, an agency that files frequently, and receives many comments on a rule, may also want to submit the five-year review more frequently than once every five years.

3. Requesting an Extension

If a review comes due during the legislative general session or some other event that makes it difficult for an agency to comply with the review requirements, the agency may submit a Five-Year Review Extension. The extension gives the agency an additional 120 days from the anniversary date in which to file the Five-Year Notice of Review and Statement of Continuation. Only one extension may be claimed per rule per anniversary date.

To obtain an extension, an agency E-mails to the Division (“Rules” or “asdomain.asitmain.rules”):

- ☐ a memo *prior to the anniversary date* indicating the reason for the extension.

The Division does not evaluate extensions—it simply records them and publishes a notice in the next *Bulletin*. Nevertheless, agencies should take care in justifying their actions.

4. The Teeth—Expiration of Unreviewed Rules

The Division must receive the Five-Year Notice of Review and Statement of Continuation or a Five-Year Review Extension *on or before* the rule’s five year anniversary. If an extension is claimed, the Division must receive the Five-Year Notice of Review and Statement of Continuation before the end of business on the 120th day. Otherwise, the rule expires and the

Division is required to remove the rule from the *Utah Administrative Code*, notify the agency that the rule is no longer enforceable, and publish a notice in the next issue of the *Bulletin*.

D. Public Requests for Rules Changes and Applicability Rulings

Any person may petition—send a letter to—an agency to make, amend, or repeal a rule (see Rule R15-2 on petitions in Appendix C, page [114](#)). The petition must contain the name, address, and association (if any) of the person and a copy of the rule or proposed change, specifically worded. The petition must also cite the proper statute showing that the agency has authority to make the change, and explain the reasons for it. Within 30 days after receipt of the petition, the agency must mail the petitioner a reply, either denying the petition and stating its reasons for denial, or agreeing to initiate rulemaking by a specified date along the suggested lines of change. If the agency agrees to the change, the agency is not bound by the specific wording of the petition. Any new wording, however, should be communicated to the petitioner.

A person may also petition an agency for a ruling on the applicability of a particular rule in a stated case. Rules for the form of the petition, deadlines, and response are left to the agency, but are required by Section 63-46b-21 of the *Administrative Procedures Act* (Appendix B, page [112](#)).

E. Public Recourse to the Courts

In 1990, the legislature enacted a provision for judicial review of administrative rules (Section 63-46a-12.1, page [100](#)). Persons aggrieved by a rule, or by agency failure to make a rule, may appeal to district court. Before complaining to the court, however, the party must petition the agency to remedy the problem unless the party has already tried to do so during the rulemaking (public comment) period, or unless the process and its inherent delays would cause “irreparable harm.” If the court agrees with the petitioner, it may: (1) find the rule invalid; (2) find the rule nonapplicable to the petitioner; (3) order the agency to comply with proper rulemaking; or (4) issue a stay or injunction to prevent irreparable harm to the petitioner. The court can declare the rule invalid only if it finds the rule in violation of higher law, or that the rule is not substantially supported by the administrative record.

The latter provision creates a burden for many agencies. In making a rule, the agency must create an “administrative record” (see page [16](#)). If the agency lacks these documents, it can anticipate that the court will invalidate its rule. The court does not review the rule “de novo,” it merely looks at the record the agency compiled at the time it made the rule. If the rule is substantially supported by that record (and is otherwise legal), the rule is upheld. If the rule is not substantially supported by the record, the rule may be invalidated even if it is otherwise legal. Therefore, it is vital that agencies create a record of their rulemaking. A person who wants to challenge a rule as “not being supported by substantial evidence when viewed in light of the whole administrative record” must commence the proceeding within “four years of the effective date of the challenged action” (see Section 63-46a-14, page [101](#)).

Rules may also become involved in other kinds of court actions. Normally, an agency’s rules provide a strong defense against liability lawsuits. A lack of rules, or rules improperly enacted, may be held against an agency as evidence of negligence. However, a rule cannot be contested on grounds of noncompliance with the Act if the rule has been in effect two years (see Section 63-46a-14, page [101](#)).

F. Converting Adjudicative Decisions into Rules

The Rulemaking Act anticipates the possibility that an agency may avoid rulemaking by simply deciding (adjudicating) each issue that comes before it, then using that decision as a precedent to guide future action. Subsection 63-46a-3(6) (page 94) effectively outlaws this form of *ad hoc* decision making. An agency decision made in an individual case that will be applied to future, similar cases must be converted into a rule within 120 days. Of course the decision must be “final,” and otherwise fit the definition of a rule.

The principle espoused is that of “open government.” An adjudicative decision informs only the parties directly involved. Rulemaking requires notice, public comment, possible hearings, and procedures designed to provide the general public with opportunity to learn about an event which may affect their lives and property.

G. Publication of an Index of Changes

The Rulemaking Act requires the Division to “publish at least annually an index of all changes to the administrative code and the effective date of each change” The *Utah Administrative Rules Index of Changes* indexes rule actions made effective from January 2 through the following January 1. For example, the first issue of the *Index*, published in 1992, indexes rulemaking actions effective from January 2, 1991, through January 1, 1992. These actions are indexed by agency and by keyword (or subject). The *Index* for the past year is compiled, printed, and available for distribution in the spring.

VII. WHAT OTHER STATUTES AFFECT RULEMAKING IN GENERAL?

A. Statutes Requiring Additional Action on the Part of Rulemaking Agencies

1. *Private Property Protection Act*, Title 63, Chapter 90

The *Private Property Protection Act* requires agencies to adopt guidelines to assist them in identifying actions, including proposed rules and emergency rules, that have constitutional taking implications. A taking is an action that may infringe on constitutional protections against the taking of private property for public use without just compensation. Each agency is then responsible for assessing each action against the guidelines. Then, before the agency implements an action that has taking implications, the agency is required to submit a copy of its assessment of the action to the governor and the Legislative Management Committee. Under the provisions of Section 63-34-13, the Department of Natural Resources has hired a private property ombudsman who is available to help all state agencies draft guidelines and answer questions about the *Private Property Protection Act*. The ombudsman may be reached by calling (801) 537-3455.

2. *Agriculture Protection Area*, Section 17-41-404

Section 17-41-404 requires agencies to encourage the continuation, development, and viability of agriculture within agriculture protection areas. This is to be accomplished by:

- (1) not enacting rules that would impose unreasonable restrictions on farm structures or farm practices within the area unless those laws, ordinances, or regulations bear a direct relationship to public health or safety or are required by federal law; and
- (2) modifying existing rules that would impose unreasonable restrictions on farm structures or farm practices within the area unless those laws, ordinances, or regulations bear a direct relationship to public health or safety or are required by federal law. (*Utah Code* Section 17-41-404.)

B. Statutes Permitting or Requiring Agency Rulemaking

1. *Administrative Procedures Act*, Title 63, Chapter 46b

In general terms, an agency may write rules under the provisions of the *Administrative Procedures Act* (APA) to designate proceedings as informal if certain conditions apply (see Section 63-46b-4, page [106](#)). If an agency designates proceedings as informal, it must also prescribe certain procedures by rule (see Section 63-46b-5, page [106](#)). In addition, an agency may write rules to modify various requirements for proceedings (see Sections 63-46b-6, page [107](#); 63-46b-7, page [107](#); 63-46b-10, page [108](#); 63-46b-12, page [109](#); and 63-46b-18, page [111](#)). Finally, the APA *requires* each agency to issue rules regarding declaratory orders (Section 63-46a-21, page [112](#)).

2. *Government Records Access and Management Act*, Title 63, Chapter 2

The *Government Records Access and Management Act* (GRAMA) permits an agency to make rules “specifying where and to whom requests for access [to government records] shall be directed” (see Subsection 63-2-204(2)). GRAMA also permits a governmental entity that includes divisions, boards, departments, committees, commissions, or other subparts, to specify by rule “at which level the requirements specified in [GRAMA] shall be undertaken” (see Subsection 63-2-904(2)).

3. *Americans with Disabilities Act*, 42 U.S.C. 12201 as implemented by 28 CFR 35.107

In 28 CFR 35.107, the U.S. Department of Justice requires public entities that employ more than 50 persons (defined as departments in Utah) to adopt and publish grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the *Americans with Disabilities Act* (ADA) of 1990 42 U.S.C. 12201 and 28 CFR Part 35, 1993 edition. Under the provisions of Section 63-46a-3, ADA grievance procedures must be promulgated as a rule.

VIII. WHAT IS THE ADMINISTRATIVE CODE?

A. The Official Administrative Code

The *Utah Administrative Code* (UAC) is the authorized compilation of all effective, permanent administrative rules of state government. It is the compilation of rules that courts and state agencies recognize as official, and that the courts are required to give judicial notice (see Section 63-46a-16, page [101](#)).

B. The Database

The Division of Administrative Rules is responsible for compiling and maintaining the UAC. All rules (except 120-Day rules as explained on page 26) that have completed the rulemaking process become a part of the code. Strictly speaking, the UAC is the computer database which the Division maintains and updates monthly (see Section 63-46a-9.6, page 97). Although there is a lag of a several weeks between effective date and computer updating, at practically any time the Division can provide a person with a copy of all rules in force. The Division posts effective rules to its web page on a monthly basis (<http://www.rules.state.ut.us/>). Private contractors also provide agencies and the public with updated copies of the database in various subscription service formats. Access is on a “read and copy” basis only.

In 1996, the legislature designated the Division’s copy of effective rules the official version. Section 63-46a-9.6 further provides that if a conflict arises regarding multiple versions of the same rule, “the latest effective version on file with the Division is considered the correct, current version.”

C. The Printed Administrative Code

Periodically, the Division contracts with a publishing firm to produce a printed version of the UAC. The first edition was enacted July 1, 1987, and subsequently published. The printed UAC contains title pages, explanations, headings, content tables, and a subject index. The printed code is only available from the publisher; please contact the Division or visit the Division’s web site for information on contacting the publisher.

In 1995, the format of the UAC was changed in an effort to increase circulation and reduce costs to the public. Instead of printing the UAC as a four-volume, soft-bound set, it was printed as a loose-leaf, pamphlet edition—each title of the code comprising a pamphlet. That way, if a citizen was interested in obtaining the Air Quality rules, they could purchase one pamphlet (approximately \$15) instead of purchasing an entire volume (approximately \$60).

The printed UAC, however, is no more than a snapshot of state rules on the publication date. Rulemaking is a daily occurrence. Agencies filed 1,525 rulemaking actions during fiscal year 1997, which translates to 6.1 actions per working day. Technically then, the printed code is obsolete within days of its publication and only the database provides a complete, current set of rules.

D. The *Bulletin* as the Supplement to the *Utah Administrative Code*

For those who must keep abreast of rule changes, the Division publishes the *Utah State Bulletin*. By law (Section 63-46a-10(1)(d)), the Division of Administrative Rules publishes “all proposed rules, rule analyses, notices of effective dates, and continuation notices” in the *Utah State Bulletin*, issued semi-monthly. Occasionally, some text may be omitted because of publication constraints, but notices are always published. The *Bulletin* also carries attorney general opinions, governor’s executive orders, agency notices, and other executive branch announcements. Most important, the *Bulletin* contains a cumulative index which starts over each January 2. All rule changes are indexed by subject and agency. Typically, the latest *Bulletin* provides the reader with the text of recent proposed rule changes and indexes all changes effective since the publication of the latest edition of the UAC. The *Bulletin*, therefore, acts as the UAC’s interim supplement between editions.

E. Public Access to Governmental Activity

The *Utah Administrative Code*, in database and printed form, significantly expands public access to the workings of state government. Imagine that only ten years ago Archives employees filed and microfilmed rules, storing them in cabinets and loose leafs—only a detective could ferret out an agency's current rules! Now, even people from Koosharem (Sevier County) to Qatar (a peninsula located halfway along the western coast of the Arabian Gulf) or from Myton (Duchesne County) to Macau (located in southeast China on the western bank of the Pearl River Delta) can (and do) access Utah's administrative rules.

Increased public access entails risks for administrators, however. Agencies may not act without rules, or in spite of them. A *Utah Administrative Code* set is available to every judge on the bench, along with the statutory code, and a quick reading will reveal whether agency action is lawful. Administrators acting outside the law are subject to lawsuit, dismissal, and possibly damages.

Although some administrators may shun public scrutiny, most agree that responsible, effective government functions best in its light. Furthermore, the legislature and courts require disclosure where national security or individual privacy are not at issue. The best interests of the state, good government, and the taxpayer, will therefore benefit by regular publication of rules in the *Utah Administrative Code*.

RULEWRITING STYLE

*In matters of grave importance,
style, not sincerity, is the vital thing.*
—Oscar Wilde

I. INTRODUCTION

Before setting pen to paper (or fingers to keyboard) to compose an administrative rule, a rulewriter should identify the authority for the rule; determine the purpose, intended results, or objectives of the rule; define the words to be used; and outline the organization of the rule.

The rulewriter should keep in mind that the basic purpose of an administrative rule is to facilitate carrying out statutory mandates of the legislature. The rule and consequent agency action should be based on statute (or a constitutional or federal mandate), legislative intent language (if any), the governor's policy, and the agency mission (as defined in or extrapolated from statute).

Fully understanding the intended results of the rule is critical to its effective composition. The rulewriter should be able to identify clearly whether the intent is to restrict activities or provide a benefit under certain conditions, or both; and be able to state the conditions under which the restrictions apply or benefits are bestowed.

There is no single approach to outlining the organization of a rule. Following the construction of statutes, however, will usually work well. Beginning with a general purpose section, followed by definitions of terms used throughout the rule, before writing the body of the rule, is a common rulewriting method. The body, as in a statute, should be divided by specific subjects the rule addresses, each a section of the rule. Good organization often makes a difficult rule comprehensible, and preparing a complete outline will facilitate good organization.

This chapter provides the rulewriter guidance in composing, drafting, organizing, and formatting rules. Read and re-read this chapter before beginning to write. It has been adapted from the Office of Legislative Research and General Counsel's *Legislative Drafting Manual for the State of Utah*, September 1995 edition, and incorporates most of the same standards applied in writing statutes.

II. RULEWRITING STYLE GENERALLY

The rulewriter who begins writing the rule is confronted with the problem of incorporating the purpose of the rule into a coherent, readable text. A major purpose of this manual is to help the drafter solve that problem and provide principles of drafting style which make it possible to avoid ambiguity and write in "plain English." This section illustrates the style drafters should follow in Utah.

Most of these principles are derived from generally accepted style and usage manuals. Others are common sense. The manual addresses only the most common rules and is not intended as a

comprehensive grammar and usage book. If this manual does not answer a question of style or usage, the rulewriter should refer to:

- Martineau, Robert J. *Drafting Legislation and Rules in Plain English*. West Publishing Co.: St. Paul, 1991.
- *Harbrace College Handbook*, 13th ed., 1997.
- *Chicago Manual of Style*, 14th ed., 1993.

If usage principles differ between these references and this manual, the principles of this manual govern.

The style presented in this manual encourages drafting techniques that are similar to and consistent with the style used by Legislative Research and General Council when drafting statutes. Consistency in style between rules and the statutes upon which they are based makes it easier for the reader to go back and forth between statute and rule.

The rulewriter's purpose in using principles of style is to accomplish the objectives of rulewriting through the clearest language possible. The rulewriter must also remember that the new language must combine with the old to form a consistent whole and provide a simple and clear statement of the law. To aid in this task, the rulewriter should be familiar with the three basic objectives of rule drafting:

- consistency;
- simplicity; and
- clarity.

These objectives call for common terminology and simple phrasing. Terms should be easily understood, with those few exceptions already stated. This does not mean that technical terms cannot be used, nor does it mean that every rule must be written for an audience of an elementary grade level. A good rulewriter avoids conversational tone. In conversation, the speaker can explain the speaker's meaning. A rulewriter does not have this right.

A. Consistency

The first principle a rulewriter must remember is consistency. The same arrangement and form should be used throughout a rule to avoid varying interpretations that may result from divergent styles and construction. Unlike literary composition, administrative rule style should avoid unnecessary variation in sentence form and uses identical words to express identical ideas, even to the point of monotony. The same words and phrases, especially if included in a definition section, should be used with the same meaning throughout the rule. Synonyms or synonymous expressions should be avoided in drafting rules. Do not use different words to denote the same meaning.

DO NOT SAY:	SAY:
Each <u>automobile</u> owner shall register the owner's <u>car</u> with the Division of Motor Vehicles.	Each <u>motor vehicle</u> owner shall register the owner's <u>motor vehicle</u> with the Division of Motor Vehicles.

Do not use the same word to denote different meanings.

DO NOT SAY:	SAY:
Each <u>tank</u> shall have a 200-gallon <u>tank</u> for fuel.	Each <u>tank</u> shall have a 200-gallon <u>fuel container</u> for fuel.

Sections similar in substance should be similarly arranged and outlined. Parallel structure also aids comprehension and promotes consistency. Sentences should be arranged so that parallel ideas look parallel, especially in a list.

DO NOT SAY:	SAY:
The commission shall: (1) screen applicants; (2) it sets fees; and (3) submitting reports.	The commission shall: (1) screen applicants; (2) set fees; and (3) submit reports.

B. Simplicity

The second principle of rule drafting is simplicity. Administrative rule language should be formal but not pompous or confusing. Writing may be formal and still be simple and direct. The following general guidelines should be followed.

1. Use familiar words and phrases that best express the intended meaning according to common and approved usage. Do not use jargon, slang, overly technical language, “legalese,” or foreign phrases (including Latin legal terms) unless the word or phrase is a term of art or its use is supported by substantial case law.
2. Use short words and sentences. Try to keep sentences to ten words or less and use words of three syllables or less.
3. If it is possible to omit a word and retain the desired meaning, omit the word.
4. Do not use superfluous and indefinite terms (for example, “real,” “actual,” “true,” “duly,” “to wit,” “whatsoever,” “hereby,” and “therewith”).
5. Express parallel points using numbered clauses.

C. Clarity

The third principle of drafting is clarity. When a rule is litigated, the court is generally not asked to decide questions of public policy but simply to tell the parties what the rule says. A drafter must avoid vagueness. Consistent use of good drafting guidelines (for example, consistency and simplicity) eliminates most vagueness. A rulewriter may also use the following techniques:

1. Do not use abstract terms.

An administrative rule should be written in language that is simple and concrete.

DO NOT SAY:	IF YOU MEAN:
vehicles	automobiles
firearms	handguns

DO NOT SAY:

aircraft

IF YOU MEAN:

helicopters

2. Avoid “noun sandwiches.”

Noun clusters can be avoided by using more prepositions.

DO NOT SAY:

Water resources loan plan

SAY:

A loan plan for water resources

3. Avoid the use of split infinitives.

Although there is nothing wrong with them, the prejudice against them is strong.

DO NOT SAY:

If it is necessary under this
section to promptly reply . . .

SAY:

If it is necessary under this
section to reply promptly . . .

4. Avoid misplaced modifiers.

Misplaced modifiers may result in more than one meaning.

DO NOT SAY:

Bob saw Sue walking across the
street.

SAY:

Bob, while walking across the
street, saw Sue.

UNLESS YOU MEAN:

Bob saw Sue, who was walking
across the street.

5. Avoid using indefinite pronouns as references.

If a pronoun could refer to more than one person in a sentence, repeat the title of the person.

DO NOT SAY:

After the executive director
appoints the director, he shall
administer this rule.

SAY:

After the executive director
appoints the director, the director shall
administer this rule.

6. Avoid placing two or more prepositional phrases together.

Word order becomes confusing when two or more prepositional phrases are used together.

DO NOT SAY:	SAY:
Each applicant for a license in this state . . .	Each license applicant from this state . . .
	UNLESS YOU MEAN
	Each applicant for a license to practice in this state . . .

III. TENSE

In addition to the general principles of consistency, clarity, and simplicity, a drafter should follow other basic drafting principles. For example, it is essential to draft in present tense and to clearly express time relationships.

A. Present Tense

A rule continually “speaks” to the person reading it. Therefore, a rule should be written in the present indicative, not in the subjunctive; and in the present perfect, not in the future perfect.

DO NOT SAY:	SAY:
A person who violates this rule shall be guilty . . .	A person who violates this rule <u>is</u> guilty . . .
If the director <u>shall have been</u> notified . . .	If the director <u>has been</u> notified . . .

The term “shall” should not be used except to impose an affirmative duty on someone. For a more complete discussion of this issue, see “Structure and Word Selection,” page [62](#).

The director shall keep records.

Subsection 68-3-12(1)(c) provides that words used in statutes in the present tense include the future. The Division of Administrative Rules accepts this construction for administrative rules. Therefore, there is generally no need to write in any tense other than the present tense. One exception to this principle occurs in expressing time relationships.

B. Time Relationships

If a time relationship must be expressed, present facts may be continued with past facts.

Any person who has committed a felony may not apply for a permit.

Combining present facts with future facts is generally not appropriate because the application of the law does not occur until that future fact happens (for example, “Any person who will commit a felony may not apply for a permit.”). This type of rule has obvious difficulties.

IV. VOICE

A. Active Voice

Whenever possible, use the active voice rather than the passive voice. It forces the rulewriter to name an actor as the subject of a sentence. Do not use the passive voice unless no identified principals are involved or the active voice would be awkward.

DO NOT SAY:	SAY:
A board <u>shall be appointed</u> to enforce this rule.	The <u>executive director shall appoint</u> a board to enforce this rule.

B. Action Verbs

Whenever possible, use action verbs instead of participles, infinitives, gerunds, and other noun or adjective verb forms. Action verbs are shorter and more direct.

DO NOT SAY:	SAY:
give consideration to	consider
give recognition to	recognize
have knowledge of	know
have need of	need
is applicable	applies
make an appointment of	appoints
make application	apply
make payment	pay
make provision for	provide for

C. Positive Voice

Write positively. If an idea can be expressed both positively and negatively, express it positively.

DO NOT SAY:	SAY:
The director <u>may not</u> appoint members <u>other</u> than those with three years experience.	The director <u>shall</u> appoint members <u>with</u> at least three years experience.

Avoid several negatives in one sentence.

DO NOT SAY:	SAY:
The project <u>may not</u> be approved <u>unless</u> all requirements are met.	The project <u>may</u> be approved <u>only</u> if all requirements are met.

V. NUMBER AND GENDER

A. Singular and Plural

Subsection 68-3-12(1)(a) provides that, in statute, the singular includes the plural and that the plural includes the singular. The Division of Administrative Rules accepts this construction for administrative rules. Phrases like “person or persons” or “person(s)” are unnecessary. Do not interchangeably use the singular and the plural (remember consistency, page 38). Generally use the singular even if the statute encompasses both. Using the singular avoids the problem of whether a law applies separately to each member of a class or to the class as a whole.

DO NOT SAY:	SAY:
The division shall issue <u>licenses</u> to <u>applicants</u> qualified as <u>dentists</u> and <u>dental hygienists</u> .	The division shall issue <u>a license</u> to <u>an applicant</u> who qualifies as a <u>dentist</u> and <u>an applicant</u> who qualifies as a <u>dental hygienist</u> .
	UNLESS YOU MEAN:
	The division shall issue <u>a license</u> to <u>an applicant</u> who qualifies as <u>both</u> a dentist and a dental hygienist.

B. Third Person

Use the third person (a person) rather than the first person (I) or the second person (you).

C. Compound Terms

If a compound word is plural, the significant word takes the “s.”

SINGULAR:	PLURAL:
attorney general	attorneys general
corporation counsel	corporation counsels
lieutenant governor	lieutenant governors
notary public	notaries public
right-of-way	rights-of-way

D. Gender

Gender-based distinctions are rarely appropriate and gender neutral language should be used when possible. However, Subsection 68-3-12(1)(b) provides that “[w]ords used in one gender comprehend the other.” Subsection 68-3-12(2)(l) provides that “man” or “men,” used either alone or as parts of compound words, include “woman” and “women.” Subsection 68-3-12(2)(i) provides that masculine

pronouns include feminine pronouns. The Division of Administrative Rules accepts this construction for administrative rules. Therefore, phrases such as “he or she” are unnecessary in drafting rules.

Although by statute masculine terms include the feminine, the drafter should still try to draft in gender neutral language. To the extent possible, the drafter should use the following techniques to avoid the use of gender specific pronouns while avoiding awkward or artificial terms or phrases.

1. Repeat the subject of the sentence or the word that would have been the pronoun’s antecedent reference.

In some instances the possessive noun may be repeated.

A person shall receive an exemption if ~~he~~ the person submits the application.

2. Substitute a noun for the pronoun.

If ~~he~~ the individual submits an application, the application shall be considered.

3. Omit the pronoun or the phrase that would include the pronoun, if the pronoun or phrase is not essential.

The director shall hold ~~his~~ office until a successor is appointed.

4. Use an article such as “a,” “an,” “the,” or “that” instead of the pronoun.

The person shall submit ~~his~~ an application.

5. Reconstruct or rewrite the sentence to avoid the need for a pronoun.

Use a relative clause.	If an <u>An</u> applicant <u>who</u> has been licensed in another state[; he] shall submit a verified application.
Use a modifier without an expressed subject.	If the commissioner finds <u>Upon finding</u> that the sampling frequency can be safely reduced, he <u>the commissioner</u> may order it reduced as specified in Subsection (2).
Remove the nominal.	A person who imports or has in his possession <u>possesses</u> dangerous drugs commits a first-degree felony.

The following table contains examples of preferred gender neutral terms.

DO NOT SAY:	SAY:
bondsman	bonder
brother	sibling

DO NOT SAY:	SAY:
businessman	executive
chairman, chairwoman	chair
clergyman	minister, member of the clergy
committeeman	committee member
crewman	crew member
daughter, daughters	child, children
draftsman	drafter
enlisted man	enlisted personnel
ex-serviceman	veteran
father	parent
female	person
fireman	firefighter
fisherman	fisher
foreman	supervisor
grandfather, grandmother	grandparent
husband	spouse
husband and wife	married couple
layman	lay person
mailman	mail carrier
male, man	person, individual
manhours	hours worked, worker hours
mankind	humanity
manmade	artificial, synthetic
manpower	personnel, staff
mother	parent
nurseryman	nursery operator
policeman	peace officer, police officer, sheriff, trooper
serviceman	military personnel
sister	sibling
son, sons	child, children
warehouseman	warehouse keeper
widow, widower	surviving spouse
wife	spouse
woman	person, individual
workman, working men	worker, workers

VI. PUNCTUATION

A. Generally

Punctuation is an important part of rulewriting. It should be used properly and uniformly. Rulewriters should know the principles of punctuation as well as they know the principles of rule construction and format.

All rules should be drafted according to generally accepted standards of punctuation. Many of these standards are discussed in this section. However, if a punctuation problem occurs that is not covered in this section, the drafter should consult the style manuals referenced on page [37](#).

B. Colons

Next to commas, colons and semicolons are perhaps the most overused and misused punctuation in legal drafting. The following are basic standards that should be followed in using colons and semicolons.

1. Use a colon to precede a series either within a paragraph or listed as separate paragraphs.
2. Use a colon to introduce a long quote (however, long quotes are usually not appropriate in rule).

C. Semicolons

The following are basic principles that should be followed in using semicolons.

1. In a series following a colon, if each of the items in the series is a complete sentence, capitalize the first word of the item and end it with a period. If each of the items is an incomplete sentence, do not capitalize the first word of the item and end each item, except the last, with a semicolon.
2. Use semicolons between two main clauses that are not joined by a conjunction.
3. Use semicolons to separate two or more coordinate elements, one or both of which contain commas.

In circumstances involving items 2 and 3 above, it is usually clearer to use separate sentences than to combine ideas using semicolons. For this same reason, the rulewriter should avoid the use of the phrases “provided, however” and “provided, further,” and other provisos. In the rare case when the use of the phrase cannot be avoided, it should be preceded by a semicolon.

The most common proper use of a semicolon is at the end of enumeration in separate paragraphs that: take the form of dependent clauses that are incomplete sentences; are either in the conjunctive or disjunctive; and are found in a series introduced by a colon.

In definition sections, series of definitions are to be complete sentences. Therefore, periods rather than semicolons should be used after each definition. A very short definitions section or subsection may be written as a single paragraph.

As used in this rule:

- (1) "Employer" means the state of Utah.
- (2) "Office" means the State Retirement Office.
- (3) "Termination date" means June 30, 1999, 12 midnight.

A rulewriter should not write lists in which sentences are attached to phrases or clauses. If there is only one inserted sentence, the rulewriter can move the sentence to the end of the list or convert the sentence into a dependent clause. It may be necessary to turn the list into a list of sentences so that the inserted sentence can be inserted directly next to the item it explains.

Often, the rulewriter will come across existing rule text that includes colons and semicolons that do not conform to these principles. The rulewriter should amend existing rules to make them conform with proper paragraphing style if the changes would not cloud the meaning of the rule.

D. Commas

Commas are inserted to separate a series of words, phrases, or clauses. When used properly, they are a useful writing tool. However, the overuse or incorrect use of commas is the most common error in drafting. Two general principles should always be observed:

1. Commas should not be used if they interrupt the thought of the sentence; and
2. Commas should be used if they make the meaning more clear.

In addition to these general principles, the drafter should also use the following specific standards. However, when there is doubt about using a comma, the general principles supersede the specific standards.

1. Use a comma to separate words and phrases in a series, including the word or phrase immediately before a conjunction. This is known as a "serial" comma.

oil, gas, or minerals

Data obtained pursuant to this section is not subject to civil, criminal, judicial, administrative, or legislative proceeding.

The division shall participate with local government agencies in the development of a health statistics system, the production of comparable and uniform health information, and the implementation of health-related policies.

2. Use a comma between adjectives preceding a noun if they are coordinating qualifying words.

The budget document shall be a brief, simple, uniform report.

3. Use a comma to set off words in apposition. These are words that add parenthetical information.

The director, who is appointed by the governor, shall keep and maintain records.

The director, unless ill, shall report annually to the executive director.

4. Use a comma to set off a nonrestrictive adjective clause. This is a clause that is not needed to make the meaning clear.

The fund account, which contains revenues from the fees collected, shall be administered by the county treasurer.

The director, who serves as the executive secretary of the commission, may hire additional clerical assistance as necessary.

Do not use a comma to set off a restrictive adjective clause. This is a clause that is needed to make the meaning clear.

The fund account that contains revenues from the fees collected shall be administered by the division.

The person who serves as the executive secretary of the commission may hire additional clerical assistance as necessary.

“Which” is used when a relative clause conveys additional information or is parenthetical. “That” is used when the clause is restrictive. For further discussion, see “That and Which,” page [71](#).

5. Use a comma between the parts of a compound sentence when punctuation is needed for clarity or to provide an additional idea. A compound sentence contains two or more independent clauses connected by a conjunction.

The division shall fund the program from its general operations budget, but they shall expend no less than \$100,000 on the program.

If a dependent clause precedes the independent clause, a comma should be used to separate the two.

If the applicant meets the requirements, the division shall grant the license.

Normal usage permits placing a comma before a conjunction that connects two independent clauses, each having a subject and a predicate. Often, however, independent clauses are sufficiently long to justify making them separate sentences. In these cases, use two separate sentences rather than two independent clauses connected by a comma because the use of two independent clauses makes the sentence too long and difficult to follow.

RECOMMENDED

The director shall be the administrative head of the Division of Wildlife Resources. The deputy director shall be a person experienced in administration and the protection of wildlife.

The board shall select one of its members as chair, but if that member is not a legislator, that member may not serve more than one term.

CORRECT BUT DISCOURAGED

The director shall be administrative head of the Division of Wildlife Resources, and the deputy director shall be a person experienced in administration and the protection of wildlife.

Do not use a comma to separate the parts of a compound sentence if the clauses are short and closely related.

The director shall act as the head of the division and shall be experienced in administration.

Do not use a comma between the verbs of a compound predicate (this is a simple sentence that contains two or more verbs with the same subject).

The chair shall be a member of the board and licensed under this rule.

6. The use of a comma after an introductory phrase is not always necessary. Use a comma if it is a long introductory prepositional phrase out of its natural order or when punctuation is needed for clarity.

In the case of an emergency, the director may

7. Use commas to set off introductory and transitional words and phrases that are also parenthetical, like “in addition,” “however,” “otherwise,” “then,” and “such as.” Do not use a comma after a short introductory prepositional phrase unless it is parenthetical.

On Sundays and holidays the county office shall be closed.

In addition, the county office shall be closed on Sundays and holidays.

8. Use a comma after introductory participial and absolute phrases.

After the votes are counted, the election judge shall seal the election pouch.

Do not use a comma to set off restrictive participial phrases (this is a phrase that is essential to the meaning of the sentence).

All persons seeking to practice in Utah shall apply with the division for a license.

9. Use a comma to set off a contrasted word or phrase.

The meetings of the commission shall be set by majority vote of the members, not by the chair.

10. In a date, use a comma before and after the year when the day of the month is stated.

This program begins on July 1, 1989, and is ended on June 30, 1991.

The commas are not needed if the day is omitted.

The events of July 1989 led to the establishment of . . .

For further discussion on dates, see “Other Time Periods,” page [61](#).

11. Use a comma to set off figures in groups of four or more numerals.

1,000,000

1,500

For further discussion on commas used in money, see “Money,” page [57](#).

12. Use a comma to set off words, phrases, and clauses that would otherwise be unclear.

DO NOT SAY:

When I was about to begin the
speech ended.

SAY:

When I was about to begin, the
speech ended.

E. Parentheses

Avoid parentheses except for use in equations, endnote reference numbers, or when defining acronyms. In general, phrases and words should be set off by commas rather than parentheses. If text is important enough to include in rule, it should not be included parenthetically.

Government Records Access and Management Act (GRAMA)

F. Apostrophes

Use apostrophes to indicate the possessive only, in the singular or plural sense, as in “director’s” or “workers’.” *Do not use contractions*, such as “can’t” and “doesn’t.”

G. Hyphens

1. Generally

Since hyphens cannot be seen when existing language is struck out in rule amendments, they should be used sparingly in the text. They are used primarily in the following cases.

a. Numbers

Hyphenation of numbers is addressed under “Numerical References” on page [58](#).

b. Time Periods

Hyphens are used in periods of time when either expressed in Arabic numerals or spelled out to begin a sentence.

60-day period	Three-week period
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For additional information on compound numbers, fractions, mixed numbers, and time periods, see “Numerical References,” page 55.

c. Compound Adjectives

Use hyphens in compound adjectives unless the first word ends in “ly.”

ready-made	readily available
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The following is a list of compound adjectives that require the use of a hyphen:

consumer-related problem	joint-stock company	port-of-entry
even-numbered years	last-known address	“-related” words
habit-forming drugs	law-abiding citizen	right-of-way
hearing-impaired student	life-sustaining procedure	state-owned property
in-service training	low-income housing units	tax-supported universities
interest-free loan	part-time employee	

2. Some Examples

In general, words are not hyphenated. When in doubt about the use of a hyphen consult a style manual (see page 37) or a comprehensive general dictionary. The following are words that may appear in rules. They are divided between those that should not be hyphenated and those that should.

a. Do Not Hyphenate

attorney at law	codefendant	interhospital
attorney in fact	coexecutor	interlocal agreement
	coinsurance	interstate
“bi” words	cooperate	
biannually	coownership	“intra” words
bimonthly		intradepartmental
bipartisan	cropland	intragovernmental
biweekly	cutoff	intrastate
	delegate at large	
“by” words	ex officio	joint stock
bylaws	extracurricular	motor driven
bypass	firefighter	
byroad	hydrocarbon	“micro” words
	hydroelectric	microorganisms
campsite	inasmuch as	microphotographic
carryall	insofar as	
checkoff		“multi” words
	“inter” words	multicar
“co” words	intercounty	multipurpose
cochair	interdepartmental	multiunit

nameplate	postaudit	sergeant at arms
nationwide	postgraduate	statehouse
“non” words	postmortem	statewide
noncancelable	postsecondary	stepparent
noncompliance	post office	streamflow
nonexistent	“pre” words	“sub” words
nonlapsing	preemptive	subagent
nonnegotiable	preexisting	subbidder
nonpartisan	preplan	subdistrict
nonpolitical	preschool	subdivision
nonprofit		
nonpublic	privately owned	takeoff
nonresident		timetable
nonsuit	“pro” words	trademark
nonsupport	pro rata	trade name
	prorate	trunk line
oncoming		
ongoing	“re” words	“under” words
	reelect	underemployment
“over” words	reemploy	undergraduate
overall	reentered	underprivileged
overinsurance	reexamined	
overpayment	reuse	update
overruled		wage earners
	rulemaking	wellborn
percent		wellhead
pipeline	“semi” words	wellspring
policyholder	semiannual	widespread
polycymaking	semimonthly	workover
	semitrailer	vice chair
“post” words		vice president

b. Hyphenate

baby-sitter	father-in-law	pari-mutuel
	first-rate	part-time employee
“by-” words	full-time	post-mortem (adverb only)
by-product	inter-American	ride-share
	law-enforcement officer	rent-a car
“carry-” words	low-level	“self-” words
carry-back	multiple-choice	tax-supported
carry-over	non-American	teen-age
		trade-in
car-pool	“off” words	two-member commission
cave-in	off-hand	un-American
charge-back	off-highway	
clean-cut	off-line	“well-” words
cross-examine	off-site	well-being
design-making		well-known
drive-in	on-line	well-used
dry-clean	on-site inspection	
even-numbered years	out-of-state travel	year-round

H. Quotation Marks

1. Generally

The rulewriter should use quotation marks in only three cases.

- a. Use quotation marks to enclose words being defined in a definition section of a rule. Do not use quotation marks again to enclose a defined term in the body of the rule.

(1) “Department” means the Department of Commerce.
The executive director of the department shall . . .

- b. Use quotation marks to enclose titles at the beginning of a statute. However, as with definitions, these should be used only in their original reference.

This chapter is known as the “Utah Administrative Rulemaking Act.”
In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may . . .

- c. Use quotation marks to enclose the contents of a form, sign, or label.

All flavoring containers shall be plainly labeled “flavorings” . . .

2. Punctuation within Quotation Marks

Punctuation is placed outside quotation marks, except for periods and commas which are placed inside quotation marks. However, when describing a form, sign, or label, periods and commas that are not part of a form, sign, or label should also be placed outside quotation marks.

. . . the word or phrase “Utah,” or “United States,” and words used in conjunction with them such as “United States Government”;

(1) all flavoring containers shall be plainly labeled “flavorings”; and
(2) restaurants may use liquor as a flavoring on dessert.

The sign shall read “Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others”, and shall be mounted in a conspicuous place.

I. Brackets

Use brackets (“[” or “]”) in rule drafting to indicate deleted material only. Brackets *may not* be used within the text of a rule (i.e., within a formula to indicate the order of operations). Brackets, and the text between them, are automatically deleted when a rule is codified. For more information, see “Preparing a Proposed Rule,” page [17](#).

J. Underlining

The use of underlining in a rule is limited to marking added words and punctuation in a new rule or rule amendment. No other use of underlining is permitted because of the obvious confusion which would result. For more information, see “Preparing a Proposed Rule,” page [17](#).

VII. CAPITALIZATION**A. Generally**

As with punctuation, the drafter should not overuse capitalization. The reason for this preference is historical. At one time type was set in hot lead, making it more expensive to set capital letters, and, as a result, a standard developed which minimized the use of capitalization. Since legal print is no longer set in hot lead, the reason for the “down style” has vanished, but the traditional capitalization principles are familiar and easier to read. To avoid the poor appearance of nonuniform capitalization, the rulewriter should use the following capitalization standards.

B. Capitalize

The following should be capitalized:

1. the first word in a sentence;
2. the first word of an indented paragraph;
3. the first word in enumerations that are complete sentences and are set out as separate paragraphs following a colon, but not serial items in paragraph form;
4. months and days of the week;
5. the word or phrase “Utah,” or “United States,” and words used in conjunction with them such as “United States Government”;
6. names of institutions such as “Utah State Prison,” “Utah State Training School,” “Utah State Hospital,” “Utah Museum of Natural History,” and “University of Utah”;
7. full and official names of associations and organizations such as “American Dental Association” or “Utah State Bar”;
8. full names of courts and other government departments, divisions, offices, committees, and boards;
9. the word “Legislature” only when referring specifically to the Utah Legislature;
10. the terms “Senate,” “House,” “House of Representatives,” and “Congress” only when used to indicate either the Utah Legislature or the United States Congress;

11. names, proper derivatives of proper names, places, historic events, and holidays, as in “Indian,” “Utah Lake,” “World War II,” and “Easter”;
12. official short titles and popular names of acts, bills, codes, and statutes;
13. the word “Part,” “Section,” “Subsection,” “Rule,” “Chapter,” “Title,” or other major subdivision designations of the administrative and statutory codes, when accompanied by the number of that subdivision, as in “Subsection 63-46a-3(3),” and when used in conjunction with the name of another code compilation, as in “Section 14 of the Federal Social Security Act”—capitalization is not necessary when used without a specific number, as in “as provided in this rule”;
14. the names of programs such as “Medicare,” “Medicaid,” and “Social Security”;
15. specific references to the state constitution or the codes such as “Utah Constitution,” “Utah Code,” “Utah Code Annotated,” or “Utah Administrative Code,” but not when general references are used such as “this code” or “this constitution”;
16. proper names of amendments should also be capitalized such as “Fourteenth Amendment” or “Gateway Amendment,” but the word “amendment” used in general references such as “the equal protection amendment” or “this amendment” should not be capitalized; and
17. specific funds or accounts such as the “General Fund” or “Mineral Lease Account.”

C. Do Not Capitalize

The following should not be capitalized:

1. generic political subdivisions, as in “state of Utah” or “county of Salt Lake,” except when such terms follow the names of the subdivisions, as in “Salt Lake County”;
2. titles of federal, state, local, and judicial officials, as in “governor,” “president,” “commissioner,” “representative,” “director,” “attorney general,” “judge,” “justice,” “chief justice,” or “treasurer,” unless used to refer to a particular person as in “Governor Leavitt”;
3. the words “federal,” “state,” or “court” when not part of a proper name (for example, “Utah Supreme Court,” or “U.S. Supreme Court”);
4. words merely indicating geographic location such as “northern Utah”; and
5. “general session” unless it is used in conjunction with a specific year “1993 General Session.”

VIII. NUMERICAL REFERENCES

A. Ten and Under

Spell out numbers ten and under when enumerating common nouns. Express numbers 11 and above in Arabic numerals.

Four persons	15 children
--------------	-------------

1. Measurements and Ages

The most common usage of the ten and under rule occurs when referring to measurements and ages.

40 gallons	two quarts
400 feet	seven miles
21 years old	six inches
	ten years old

The expression of age can be ambiguous at times. The phrase “older than 18 years old” could mean the day after the 18th birthday or the day of the 19th birthday. Either the term “old” or the term “of age” may be used when referring to a person's age. However, the term chosen should be used consistently throughout a rule.

DO NOT SAY:	SAY:
Applicants shall be more than 21 years old.	Applicants shall be 21 years of age or older.
Applicants shall be between 21 and 50 years of age.	Applicants shall be at least 21 years old but shall be under 50 years old.

2. Exceptions to the Ten and Under Rule

There are several exceptions to the ten and under rule. The drafter should always use Arabic numerals to express:

- money;
- population;
- percentages;
- mixed numbers;
- groups of numbers;
- numbers in tabular form; and
- citation to the *Utah Code*, *Utah Administrative Code*, and other laws.

a. Money

Always express money using Arabic numerals.

\$5,000,000	\$20,000
-------------	----------

1) Decimals

Use decimals only to express cents or tax-related figures such as tax rates, assessments, and valuations. In such cases decimals are preferred to fractions, although at times a fraction is the only way to express a tax rate.

\$5.83
\$0.50
.00048 of assessed valuation of tangible property
.0032 per assessed dollar valuation
sales tax rate of 5.85%
sales tax rate of 6-3/4%

Do not use zeroes after a decimal unless actual cents must be expressed.

DO NOT SAY:	SAY:
\$5.00	\$5

In listing monetary amounts in tabular form, however, use both decimals and zeros.

\$ 5.00
10.13
194.10
2,100.00

2) Commas

Use commas in monetary amounts of four figures or more.

DO NOT SAY:	SAY:
\$5000000	\$5,000,000
\$9700	\$9,700
\$1500	\$1,500

b. Population

Always express population using Arabic numerals.

1,382,600 people Any city with a population of 100,000 or more . . .

c. Percentages

Always express percentages using Arabic numerals and the percent symbol (%).

5%	15-1/2%	3.3%
----	---------	------

d. Mixed Numbers and Fractions

With the occasional exception of two-thirds, express mixed numbers and fractions using Arabic numerals. Spell out “two-thirds” when stating the need for a two-thirds vote by a committee.

1-1/2	2/3
4-7/8	9/12

e. Groups of Numbers

If any number in a group of numbers exceeds ten, always express the group using Arabic numerals. If all numbers are ten or under spell out the numbers.

DO NOT SAY:	SAY:
ten, 45, five	10, 45, 5

f. Numbers in Tabular Form

Always list numbers in tabular form using Arabic numerals.

10
100
3

B. Hyphenation

1. Compound Numbers from Twenty-one to Ninety-nine

Hyphens are used when numbers are spelled out to begin a sentence. This rule includes both cardinal and ordinal numbers.

Twenty-one	Ninety-nine
Twenty-first . . .	Ninety-ninth . . .

2. Fractions

Hyphens are used when fractions are spelled out to begin a sentence, except that if the numerator or denominator is a compound number requiring a hyphen it is the only number hyphenated.

Two-thirds . . .	Six sixty-fourths . . .
------------------	-------------------------

3. Mixed Numbers

Hyphens are used when a mixed number is expressed in either Arabic numerals or spelled out to begin a sentence.

1-1/2	One and one-half
-------	------------------

C. Special Rules

1. Beginning a Sentence With a Number

Regardless of the ten and under rule and the exceptions listed previously, the rulewriter should always spell out a number if it begins a sentence or a paragraph. If a number greater than 100 appears at the beginning of a sentence, it is always expressed in words and no “and” should appear.

DO NOT SAY:	SAY:
One hundred <u>and</u> fifteen people attended the party.	One hundred fifteen people attended the party.

2. Following With a Number in Parentheses

When a number is spelled out, it should not be followed by a numeral in parentheses.

DO NOT SAY:	SAY:
Twenty-nine (<u>29</u>)	Twenty-nine

3. Singular Verb to Express Dollars

References to dollars should be used with a singular verb.

DO NOT SAY:	SAY:
There are appropriated \$50,000 . . .	There <u>is</u> appropriated \$50,000 . . .

4. Formulas and Equations

Mathematical, scientific, and chemical formulas and equations should be described in text to avoid the risk of a corrupted formula or equation being published. Formulas and equations may become corrupted if they include special symbols, brackets, or underlining.

If formulas or equations are necessary, it is possible to use symbols common to all systems (parentheses, slashes, pluses, hyphens, asterisks, and text) and not use other special symbols (brackets, braces, or underlining).

DO NOT SAY:	
$\frac{175(\text{Grams contained U-235})}{350} + \frac{50(\text{grams U-233})}{200} + \frac{50(\text{Grams Pu})}{200} > 1$	
SAY:	
((175(Grams contained U-235)/350) + (50(Grams U-233)/200) + (50(Grams Pu)/200)) greater than 1	

If formulas or equations are essential, there are a few important things to remember:

- Special symbols may be lost when text is transferred among different computer programs or systems (see “Symbols,” page 65).
- Underlining is reserved solely for the purpose of showing new language in proposed rules. Underlining is stripped when rules are inserted into the *Utah Administrative Code*. It will not appear in the published text.
- Brackets identify text being deleted in proposed rules. Brackets and bracketed text are deleted when rules are inserted into the *Utah Administrative Code*.

D. Time

Special combinations of Arabic numerals and words must be used to express time in rules.

1. Hours

Never use the phrase “o’clock.” Instead, use “a.m.” and “p.m.” Also use “noon” and “midnight,” not “12:00 m.,” “12:00 p.m.,” or “12:00 a.m.” Do not use a colon to express minutes unless actual minutes are to be indicated.

DO NOT SAY:	SAY:
9:00 a.m.	9 a.m.
10:00 p.m.	10 p.m.
	10:15 p.m.
	10:15 a.m.
12 p.m. or 12 m	12 noon
12 a.m.	12 midnight

2. Other Time Periods

To eliminate uncertainty in expressing periods of time, the first and last days of the period should be specified. Make the first day of the application clear. Never use imprecise phrases such as “from and after,” and “to or until.”

DO NOT SAY:

July 1, 1984, to July 1, 1985

Between July 1, 1984, and July 1, 1985

SAY:

After June 30, 1984, and before July 1, 1985

Express dates plainly and simply using common notation. If a time period is expressed in whole days, use “day” not “time.” “Time” may be construed as referring to the exact time of day or night.

DO NOT SAY:

Five days after the time when . . .

SAY:

Five days after the day on which . . .

Use a set day of the week to indicate a deadline or other time restraint.

Each license shall be renewed each year on the first Monday of April.

If a time period is expressed in whole years and the context creates no special ambiguity, use the word “year.” If a continuous two-year period is intended, use “for a two-year period” rather than “for two years.” If something must be done by the end of a named period be sure to show whether the act should be done before the period begins or whether it must be done within that period.

Each licensee shall pay the fee during the one-year period beginning July 1, 1994, and ending June 30, 1995.

Each licensee shall pay the fee before July 1, 1995.

Since a rule is considered to be continuously speaking, avoid words such as “now,” “present,” “already,” “heretofore,” or “hereafter.” Write the law as it would be applied if continuously in effect, not as if it were applied only at a given point in time.

DO NOT SAY:

The members shall receive per diem as now prescribed by law.

SAY:

The members shall receive per diem as provided by Rule R25-15.

When referring to effective dates use the actual date itself rather than ambiguous phrases such as “after this rule takes effect.”

After July 1, 1995, members shall serve two-year terms.

Subsection 68-3-12(2)(m) states that “month” means a calendar month. The Division of Administrative Rules accepts this construction for administrative rules. For the drafter’s purposes, “week” also means a calendar week.

E. References to the *Utah Code*, *Utah Administrative Code*, and Other Laws

References to the codes and other laws are always written using numerals. For a more detailed discussion concerning references, see “Citations in the Body of the Rule,” page 71.

Utah Constitution, Article XIII, Section 2
Subsections 32-6-15(b) through 32-6-15(e)
Section R708-2-24
28 U.S.C. Section 105(a)
Pub. L. No. 94-12, 89 Stat. 26
42 CFR 2.1 (1996)

IX. STRUCTURE AND WORD SELECTION

A. Exceptions

The rulewriter should state a general principle or category directly rather than describing that principle or category by stating its exceptions.

DO NOT SAY:	SAY:
All persons <u>except</u> those 18 years old or older shall	Each person <u>under</u> 18 years old shall

When exceptions are used they should be stated in simple terms. If only one exception applies, the general principle should be stated first and the exception should follow. The word “except” should be used to introduce the exception.

This rule applies to all persons <u>except</u> persons 65 years of age or older.

If there are multiple conditions or exceptions, the drafter should consider: (1) placing all exceptions in a separate subsection and refer to this subsection before stating the general rule; or (2) placing an enumerated list at the end of the sentence of the general rule has been stated (see “Enumerations,” page 63).

Except as provided in Subsection R477-200-6 (1)(b), the director shall . . .

The director shall . . . , except if the applicant:

- (a) is a minor;
- (b) has been convicted of a felony; or
- (c) . . .

B. Conditions

When conditions are used they should also be stated in simple terms. If only one or two simple conditions apply, they should be stated first and the general principle should follow. The word “if” should be used to introduce the condition.

If a person violates this rule, the person is subject to prosecution.

C. Limitations

Limitations should be avoided if possible. Generally, a rearrangement of sentences and wording will accomplish the drafter’s objective without the use of a limitation. If a limitation must be used, it should follow the general principle and be introduced with the word “but.”

“Person” means individual, corporation, firm, and partnership, but does not include a public entity.

D. Provisos

Provisos are archaic and usually result in unintelligible phrases. Expressions such as “provided that,” “provided further that,” and similar phrases should not be used. In most cases, rearranging the sentence will eliminate the need for the proviso. If the clause modified by a proviso is a complete thought, it should always be rewritten as a complete sentence. If the proviso is rewritten as an exception or condition, principles discussed above should be followed in drafting the exception or condition.

E. Enumerations

1. Generally

The rulewriter should enumerate or list exceptions or conditions in separate paragraphs wherever possible. This makes the provisions easier to read. Enumerations should be preceded by introductory language stating the general principle set off with a colon. Each condition or exception should then be followed by a semicolon. The next to last item in the enumeration may be preceded by a conjunction. If the introductory language is sufficiently clear, a conjunction is not needed. However, insertion of a conjunction in this case is optional with the drafter.

This rule does not apply to:

- (1) investment companies;
- (2) securities brokers and dealers;
- (3) insurance companies; or
- (4) licensed attorneys.

2. Principle of “Expression of One Thing is the Exclusion of Another” (*Expressio Unius Est Exclusio Alterius*)

In enumerating exceptions or other matters, the rulewriter must recognize that there is an inference that all omissions from a list are understood to be exclusions. Even though it is practically impossible to make such lists complete, the courts have applied the principle *expressio unius est exclusio alterius*, which means “expression of one thing is the exclusion of another,” and refuse to apply the rule to something that would have been included if someone had thought of it in time. However, because this rule is a rule of construction and not a rule of law, it can be overcome by a clear indication of contrary intent. In some jurisdictions, the drafter avoids this problem by using “includes, but not limited to, . . .” Because the latter phrase may be interpreted as prospective incorporation, however, it should be avoided. In Utah, however, the drafter need only use the term “include.” According to *Sutherland Statutory Construction*, when “include” is used, “it is generally improper to conclude that [things] not specifically enumerated are excluded.” *Sutherland Stat. Const.* Section 47.23 (4th Ed. 1984).

DO NOT SAY:

This rule applies to all evidences of indebtedness, including, but not limited to, bonds, notes, and certificates.

SAY:

This rule applies to all evidences of indebtedness including bonds, notes, and certificates.

The use of “includes” in this case is similar to its use in definitions. It is inclusive but not exclusive, allowing the courts and agencies to adopt additional meanings. For further information on the use of “includes” see page [68](#).

3. Principle of “General Words Followed by Specific” (*Ejusdem Generis*)

The rule of *ejusdem generis* is also used to interpret rules. Simply stated, it means that when general words follow an enumeration of persons or things with a particular and specific meaning, the general words are not to be construed in their broadest meaning but are to be held as applying only to persons or things of the same general kind or class as those specified in the enumeration. The rulewriter should use general terms in cases where it is reasonable not to have specific enumeration. If enumeration is required, however, the drafter should use introductory language that applies to all items in that class listed.

SAY:

The Division of Conservation may sell gravel, sand, earth, or other material from state-owned land.

IF YOU MEAN:

material similar in type to gravel, sand, and earth which does not include timber.

F. Paragraphs

The rulewriter should divide long sentences and phrases into shorter and more readable paragraphs. This should be done when amending existing rules as well as when writing new rules.

(1) ~~[If any]~~ (a) Any payment on a contract with a private person, firm, or corporation that is retained or withheld~~[, it]~~ shall be placed in an interest bearing account ~~[and the]~~.

(b) The interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city, or the board of trustees of the town. ~~[It is the responsibility of the]~~

The rulewriter should also avoid adding paragraphs without designation (a number or letter) to the end of a section. If the language in this “dangling” paragraph affects the last paragraph only, it should be part of the affected paragraph. If the dangling paragraph affects multiple paragraphs, the affected paragraphs should become one subsection, and the dangling paragraph made either a separate subsection or a separate section altogether. By assigning each paragraph a number or letter, the rulewriter makes the rule easier to understand and facilitates accurate citation.

G. Abbreviations and Acronyms

Avoid most abbreviations. Abbreviations and acronyms may cause ambiguity in rules, and therefore, should be used sparingly if at all. Use abbreviations to reference other laws like federal statutes and to indicate the time of day (a.m., p.m.). Some words are always abbreviated such as “etc.,” “i.e.,” and “e.g.,” but these should not be used in rules.

If an acronym is used, the rulewriters must clearly define it. An acronym should be defined in the “Definitions” section of the rule. Alternatively, it may be defined the first time it appears in each rule in which it is used. Acronyms do not have periods.

“GRAMA” means the Government Records Access and Management Act, Title 63, Chapter 2.

. . . Government Records Access and Management Act (GRAMA) . . .

H. Symbols

Symbols such as *, #, §, [,], &, <, >, °, ±, ¶, ¢, μ, —, —, ®, ©, ™, and @, may not be used in rule drafting except in the special cases noted elsewhere in this manual. Some symbols serve as commands for computer programs and their use within the rule text may cause undesired results. Other symbols, like those created within software (for example, WordPerfect’s Compose feature), will not translate between computer systems or programs and are simply lost, thus distorting the meaning of the rule. Textual counterparts to symbols should be used to insure correctness and clarity. REMEMBER: *When in doubt, spell it out!*

DO NOT SAY:	SAY:
* † ‡	do not use
#	“pound” or “number”
§	“Section”
§§	“Sections”

DO NOT SAY:	SAY:
[] { }	“(“ or “)”—do not use brackets or braces as part of the rule text
&	“and”
> < ≤ ≥	“greater than”, “less than”, “less than or equal to”, and “greater than or equal to” respectively
°	“degrees”
± +/-	“plus or minus”
¶	“paragraph”
¢	“cents”
μ Σ	do not use Greek or other foreign letters
@	“at”, “each at”, or “sum”
^	do not use
/	“or”
“ ” ‘ ’	” ” ’ ’
©	“copyright”
TM	“trademark”
®	“registered trademark”

To avoid the unintentional insertion of symbols, rulewriters should turn off WordPerfect’s QuickCorrect feature before preparing rule text or a rulemaking form. QuickCorrect automatically substitutes one set of characters for another (for example, “(c)” becomes “©”). In WordPerfect 7, QuickCorrect may be disabled by running WordPerfect, going to the “Tools” menu, selecting “QuickCorrect,” deselecting “Replace words as you type,” clicking the “Options” button, deselecting “Turn on single quotes,” deselecting “Turn on double quotes,” clicking the “OK” button, and then clicking the “Close” button.

During the last few years, the Internet has become a significant source of information. If an agency wants to include an Internet address (typically know as a Uniform Resource Locator or URL), it may use the standard notation for the address. Agencies include URLs in rules knowing that these symbols may be lost during electronic translation of a rule. If the information is critical to the content of the rule—spell it out!

asitmain.someone@email.state.ut.us
<http://www.rules.state.ut.us/law/uara.htm#63-46a-9>

I. Official Titles

In referring to a public officer or agency, use the official and correct title of the person or agency. For example, do not call the director of the Division of Real Estate the “commissioner.”

J. Special Terms

Many terms and phrases are difficult in meaning, spelling, and usage to the drafter. These include archaic legal language, commonly known as “legalese.” The most important of these problem terms are described here. A detailed list of preferred terms and phrases are contained in Appendix L, page [155](#). The most common drafting problem terms are described here while a detailed list of problem words are contained in Appendix M, page [161](#).

1. Affect v. Effect

Whether to use the term “affect” or “effect” in drafting generally depends on whether a verb or a noun is needed. The verb “affect” means to influence, attack, or touch the emotions. The noun “effect” means the result of an act or event. “Effect” is used as a verb only to indicate when something is to produce a specific effect.

DO NOT SAY:	SAY:
This provision takes affect on July 1, 1994.	This provision takes effect on July 1, 1994.

However, “effect” may also be used as a verb, meaning “to cause to come into being, to bring about” Thus, “The agency may effect change by engaging in these actions”

2. And/Or

Never use “and/or.” Its use encourages laziness. The rulewriter should be able to determine which term is correct. If all the items in an enumeration are to be taken together, they may be joined at the last two items by the conjunction “and.” If the items are to be taken in the alternative, “or” is used. Even if terms are to be taken both together and in the alternative the “and/or” need not be used. The drafter should use “or both” or a similar phrase or simply make the introductory language clear.

DO NOT SAY:	SAY:
Each corporation <u>and/or</u> bank shall	Each corporation, bank, <u>or both</u> , shall

Do not use “/” in the place of a word. It creates ambiguity.

3. Any and Each

One way to avoid ambiguity in writing is to use the singular subject. The rulewriter should therefore use the singular articles “a,” “an,” and “the.” Sometimes the use of these articles creates an ambiguity, and if this occurs, the drafter should use the indefinite pronouns “any” and “each.” “Each” should be used if imposing an obligation to act, and “any” should be used if granting a right, privilege, or power. The term “every” should not be used.

DO NOT SAY:	SAY:
The commissioner <u>shall</u> issue a certificate to <u>an</u> insurance company.	The commissioner <u>shall</u> issue a certificate to <u>each</u> insurance company.
The commissioner <u>may</u> issue a certificate to <u>an</u> insurance company.	The commissioner <u>may</u> issue a certificate to <u>any</u> insurance company.

If the subject is plural, the articles and indefinite pronouns need not be used. However, the singular expression is preferred. The terms “all” and “some” should not be used.

DO NOT SAY:	SAY:
<u>All</u> qualified employees shall . . .	Qualified employees shall . . .

4. Compose and Comprise

The words “compose” and “comprise” both involve the idea of containing, embracing, comprehending, or surrounding. “Compose” also means making or forming.

The board shall be composed of ten members.

“Comprise” suggests including or containing. The whole comprises the parts, the parts do not comprise the whole.

The board comprises ten members.

“Comprised of” is a wordy expression and should not be used.

The phrases “consists in,” “consists of,” and “include” are similar expressions and may also be used in drafting. The drafter should make sure, however, to use them properly.

5. If and When

Use “if” not “when” to express a condition. Use “when” only as a reference to time.

DO NOT SAY:	SAY:
<u>If</u> the complaint is filed, the director shall schedule a hearing . . .	<u>When</u> the complaint is filed, the director shall schedule a hearing . . .
<u>When</u> the applicant is qualified . . .	<u>If</u> the applicant is qualified . . .

6. Includes

As discussed in “Expression of One Thing is the Exclusion of Another,” earlier in this chapter, if a rule contains an inclusive list the term “includes” should be used. This term is inclusive but not exclusive, allowing courts and agencies to adopt additional meanings. Do not say, “shall be deemed to include. . .” or “shall include but is not limited to. . .” If necessary, a rulewriter

may list items that are not to be included under a definition or enumeration. In such case, the rulewriter may begin the list of exclusions with the phrase, “but does not include”

7. Notwithstanding

Avoid the use of the term “notwithstanding” unless referring to a specific code section. It normally is used as a shortcut to avoid conflicts with other sections. It is preferable for the rulewriter to rewrite that section so that there is no conflict. If a conflict cannot be avoided, the drafter should specify the existing section that is in conflict and indicate the provisions of the rule supersede that section. But if that is not possible, the rulewriter should simply state that the new section supersedes conflicting sections.

DO NOT SAY:	SAY:
<u>Notwithstanding</u> Section 13-1-1	Section 13-1-1 is amended to read:
<u>Notwithstanding</u> Section 13-1-1	This section <u>supersedes</u> Section 13-1-1.
<u>Notwithstanding</u> any other law to the contrary	This section <u>supersedes</u> conflicting sections.

8. Person and Party

The term “party” refers to a party in a legal action, and should not be used to denote a “person” who carries out an act or discharges a duty.

DO NOT SAY:	SAY:
A party that violates	A person that violates

9. Pursuant To

Phrases like “pursuant to” have been used when identifying or making reference to other provisions of the law. Use of the phrase “the provisions of” is superfluous and should not be used. All of the following are acceptable but the rulewriter should be consistent in using them.

pursuant to . . .
as provided in . . .
under . . .
prescribed by . . .
as described in . . .

10. Respectively and As the Case May Be

“Respectively” and “as the case may be” are often used improperly. If a rulewriter desires to apply A to X, B to Y, and C to Z, that may be clarified by stating, “A, B, and C apply to X, Y,

and Z, respectively.” Here the three relationships are concurrent, not alternative. In such a statement, the verb should be plural.

On the other hand, if a rulewriter desires to apply A if X occurs, B if Y occurs, and C if Z occurs, the correct statement would be “If X, Y, or Z occurs, A, B, or C applies, as the case may be.” Here the three relationships are alternative, not concurrent. The verb should be singular in this situation.

11. Rules

The phrase “rules and regulations” refers to two different things. “Rules” are made by administrative agencies in this state and are referred to as such in official publications. State agencies do not make “regulations.” See Subsection 63-46a-2(16). The rulewriter, when referring to rules made by Utah agencies, should use only the term “rules.” The term “regulations” is generally used at the federal level and should be used in reference to federal regulations.

12. Said, Same, Such

Try to use “a,” “an,” “it,” “that,” “the,” “them,” “these,” “this,” or “those” instead of “said” and “same.” “Such” is not preferred but its use is sometimes necessary to modify a preceding term or phrase. “Such as” and “such a” may be used to introduce an example.

13. Shall, May, May Not, Must

Do not use expressions such as “is authorized to,” “is empowered to,” “has the duty to,” “can,” or “the Legislature intends that the director shall.” “Shall” or “may” are more appropriate expressions. “Must” may be used if action is intended to be a condition precedent to the accrual of a right or privilege.

“Shall” is imperative or mandatory and is used when indicating an obligation to act.

DO NOT SAY:

The director will submit a budget.

SAY:

The director shall submit a budget.

“May” is permissive or directory and is used when the rule is granting a right, privilege, or power, or indicating any discretion to act.

DO NOT SAY:

The director is authorized to issue an order.

SAY:

The director may issue an order.

Whenever possible, an obligation or discretion to act should be stated positively. However, if a right, privilege, or power is abridged and the sentence contains a negative subject, “may not” or “no person may” should be used. This is preferable to “shall not” and “no person shall,” because “no person shall” literally means that no one is required to act. A rule that includes the

phrase “shall not” negates the obligation, but not the permission to act. “A person may not” also negates the permission to act and is, therefore, the stronger prohibition.

DO NOT SAY:	SAY:
An applicant shall not	An applicant may not

Because some courts on occasion have interpreted “shall” to mean “may” and vice versa, it is imperative that the drafter give careful consideration to the context. If a problem of interpretation arises, add a sentence stating that action inconsistent with the provision is void.

14. State of Utah

Reference to “the state of Utah” is unnecessary. Utah cannot make rules for another state. When it is necessary to refer to the state of Utah, use “state,” “this state,” or “Utah.”

15. That and Which

The terms “that” and “which” are not interchangeable. The choice between them is determined by the type of clause that follows them. “That” is used to introduce a restrictive clause, or a clause that provides information necessary for full comprehension of the sentence.

Any funds that are not restricted shall lapse.

A restrictive clause is never set off by commas.

“Which” is used to introduce a nonrestrictive clause, or a clause that provides nonessential or parenthetical information.

The division, which is responsible for all licenses, shall provide an application blank to each applicant.

A nonrestrictive clause is usually set off by commas. See “Commas” on page [47](#).

16. Where and When

“When” is the preferred term except when dealing with a specific place.

DO NOT SAY:	SAY:
Where the licensee violates	When the licensee violates

X. CITATIONS IN THE BODY OF THE RULE

A. Generally

There is no consistency among the branches of state government when it comes to which citation style to use. The judicial branch follows *The Bluebook: A Uniform System of Citation* (Harvard Law Review Association). The legislative branch has adopted its own citation style, published in the *Legislative Drafting Manual for the State of Utah* (September 1995). In addition, there are various efforts currently underway to standardize a uniform citation method.

The Division recommends the legislative citation method for: the *Utah Constitution*, Utah statute, Utah court rules, and federal statutory sources; and the judicial citation method for: *Utah Laws*, and court cases. The citation style for administrative rules is based on the legislative style for statutes. The citation style for federal regulations is that recommended by the Office of the Federal Register.

If a uniform citation method is formally adopted, the Division will change these recommendations to be consistent with that uniform style. Until that time, when a rulewriter prepares a new rule or an amendment to an existing rule, *the rulewriter should use a method of citation that is consistent across all of an agency's rules.*

B. Utah Constitution

Within the body of a rule the Utah Constitution is cited by article and section.

Utah Constitution Article XIII, Section 2

C. Utah Code

The *Utah Code* is divided as follows:

- titles;
- chapters;
- parts;
- sections; and
- subsections.

1. Titles, Chapters, and Parts

Titles, chapters, and parts are numbered differently than sections and subsections. Titles, chapters, and parts are all referenced by stating their single or double-digit number and are referenced in descending order.

Title 59, Chapter 3
Title 59, Chapter 3, Part 1

References to two or more chapters are referenced as follows:

Chapters 1 and 3 Chapters 1 through 3 Chapter 1 or 2

If the citation is to an entire Chapter or Act, in addition to the title and chapter, add a reference to the short title of the act if it has one.

Title 70A, Utah Uniform Commercial Code Title 63, Chapter 46a, Utah Administrative Rulemaking Act Title 61, Chapter 1, Utah Uniform Securities Act

2. Sections

Sections are the fundamental unit of the *Utah Code*. They are numbered in three parts offset by hyphens.

Section 59-3-101

References to other provisions of law are by inference to other sections of the *Utah Code* unless otherwise stated. Therefore, references to “Utah Code Annotated” or “UCA” are superfluous.

DO NOT SAY:	SAY:
Section 58-1-1, Utah Code Annotated 1953	Section 58-1-1
Section 58-1-1, UCA	Section 58-1-1

References to single or multiple sections throughout the *Utah Code* should be as follows:

Single section:	Section 58-1-1
One of many sections:	Section 31A-7-101, 31A-7-102, <u>or</u> 31A-7-103
All of many sections:	Sections 78-12-1, 78-12-4, <u>and</u> 78-12-10
Consecutive sections:	Sections 59-10-101 <u>through</u> 59-10-110

Do not use the phrase “Section 59-10-101 to Section 59-10-110” because is ambiguous.

DO NOT SAY:	SAY:
Section 58-1-1 to 58-1-10	Section 58-1-1 through 58-1-10

If possible, a brief description of a cited statute should be included in the reference so the reader will not be forced to turn to the provision to see what it is about.

The procedure used shall be the same as that used in Section 13-1-1, concerning consumer grievances.

3. Subsections

Subdivisions within either a section or a subsection are called “subsections.” Subsections are cited within parentheses.

Subsection 58-1-1(2)
Subsection 58-1-1(3)(a)

When a subsection is referred to, reference it along with the section number. Using the full reference enables hypertext linking when rules are uploaded into text databases or posted to the Internet. The phrase “. . . of Section 58-1-1” should not be used.

DO NOT SAY:	SAY:
Subsection (2)(a) of Section 58-1-1	Subsection 58-1-1(2)(a)
Section 58-1-1(2)	Subsection 58-1-1(2)
Section 58-1-1(2)(a)	Subsection 58-1-1(2)(a)
Subsection (2) of Section 58-1-1	Subsection 58-1-1(2)
Subsection (2) of this section	Subsection 58-1-1(2)
Subsection (2)(a) of this section	Subsection 58-1-1(2)(a)

When possible cite only sections. Cite subsections when it is needed to avoid confusion. The rulewriter should avoid citing sections in units smaller than a subsection such as “Subsection 58-1-1(2)(a).” If further division is absolutely necessary, however, use the lower case Roman numeral and the capital letter, both enclosed by parentheses: “Subsection 58-1-1(2)(a)(i)(A).” References to these subdivisions are always “subsections,” to avoid confusion and maintain simplicity.

(1) (a) The director shall appoint an executive secretary.
(b) The executive secretary appointed under Subsection 58-1-1(1)(a) shall be a Utah resident.
(2) (a) The director may, after appointing the executive secretary as provided in Subsection 58-1-1(1)(a), employ necessary staff.
(b) Staff appointed by the director
(3) Subsections 58-1-1(1) and 58-1-1(2) do not apply to a person employed by the department before July 1, 1988.

4. Laws of Utah

In some instances, a bill is not codified into the *Utah Code*, and the only reference available is to the session laws. In this case, refer to the year and chapter of the session law involved. If the bill passed during a special session, the special session is also cited.

1983 Utah Laws 112 1996 Utah Laws 9, Second Special Session

D. Utah Administrative Code

The *Utah Administrative Code* is divided as follows:

- titles;
- rules;
- sections; and
- subsections.

In general, the same standards apply for numbering and referencing the *Utah Administrative Code* as for the statutory code. To avoid confusion with statutory citations, each administrative code citation begins with an “R.”

1. Titles and Rules

Section 63-46a-9.6 establishes the larger divisions of the code. A “title” is usually not referred to individually, but if necessary, may be cited as “Title R56.” A rule is always defined by its two-part, hyphenated number, as in “Rule R56-3”. Titles and rules are all referenced by stating their single, or double digit number.

Title R56 Rule R56-3

2. Sections

Sections are referenced by their three-part hyphenated number.

Section R56-3-101

All references to other rules are by inference to other sections of the most current edition of the administrative code unless otherwise stated. Therefore, references to the *Utah Administrative Code* and phrases such as “of this code” are superfluous.

DO NOT SAY:	SAY:
Section R56-1-1, Utah Administrative Code 1992	Section R56-1-1
Section R56-1-1 of this code	Section R56-1-1

3. Subsections

Subsections of sections and subdivisions within a subsection are all called “subsections” and are cited within parentheses:

Subsection R56-1-1(2)
Subsection R56-1-1(3)(a)

When a subsection is referred to, cite it along with the section number.

DO NOT SAY: Subsection (2)(a) of Section R56-1-1	SAY: Subsection R56-1-1(2)(a)
------------------------------------------------------------	-----------------------------------------

References to other portions of the administrative code should never be “above,” “below,” “hereinafter,” “hereinbefore,” and similar vague terms. Always cite the specific designation.

If possible, a brief description of a cited rule should be included in the reference so the reader will not be forced to turn to the provision to see what it is about.

The procedure used shall be the same as that used in Section R160-1-1, concerning consumer grievances.

4. Other Organizational Divisions

The format for administrative rules is different from that of statutes or federal regulations. Utah’s rule format does not include Parts or Subparts. Chapters in the *Utah Code* are the equivalent of Rules in the *Utah Administrative Code*. Currently, the only designations that may be used are Title, Rule, Section, and Subsection.

E. Court Rules

Five general bodies of court rules—the Utah Rules of Evidence, the Utah Rules of Civil Procedure, the Utah Rules of Criminal Procedure, the Utah Rules of Appellate Procedure, and the Utah Juvenile Court Rules of Practice and Procedure—may be cited in administrative rules and have the force and effect of law to the extent they are not contrary to statute.

Utah Rules of Civil Procedure, Rule 65B
Utah Rules of Evidence, Rule 20
Utah Rules of Criminal Procedure, Rule 15
Utah Rules of Appellate Procedure, Rule 5
Utah Juvenile Court Rules of Practice and Procedure, Rule 10

The Utah Code of Judicial Administration may also be cited in rule. It should be cited as follows:

Utah Code of Judicial Administration, Rule 7-201

F. Federal Statutes and Regulations

Whenever possible, refer to federal law by reference to the *United States Code* or applicable Public Law rather than to a short title. When citing federal regulations cite the *Code of Federal Regulations* (CFR) if the regulation has been codified. If the regulation has been adopted, but not yet been codified in the CFR, cite the *Federal Register* (FR) reference.

G.I. Bill of Rights, 38 U.S.C. Section 495 et seq. Tax Reduction Act of 1975, Pub. L. No. 94-12, 89 Stat. 26 FTC Credit Practices Rule, 16 CFR 444 (1996) 55 FR 52782

One exception to this principle is when the rule is making reference to a well-known or often changed federal law, such as the Internal Revenue Code or the Social Security Act.

Section 63, Internal Revenue Code

Reference to an act's short title must be accompanied by the *United States Code* citation to ensure that the lay person can easily identify the federal law in question.

When citing federal regulations, use the preferred citation style printed in the front of the CFR or the FR. Rulewriters should, whenever possible, use CFR references instead of FR references. However, there may be instances when federal law requires that rules must be in place before the regulation actually appears in the CFR. In cases like this, it is appropriate to refer to the FR.

CITATION:	MEANS:
29 CFR 1901.1 (1992)	Code of Federal Regulations, Title 29, Part 1901, Section 1, 1992 edition
48 FR 1196	Federal Register, Vol. 48, page 1,196 (the date is implicit from the volume number)

XI. INCORPORATION BY REFERENCE

A. Generally

Incorporation by reference is a legal tool that allows an agency to take a standard published by another entity and make it an enforceable part of the agency's rule without reprinting the entire text in its rule. The factors to consider when deciding to incorporate material by reference include:

- the statutory parameters;
- the importance of the incorporated material to the rule;
- the need to enforce standards as part of the rule; and
- the availability of the incorporated material.

B. Use of Incorporation

The Rulemaking Act *permits* agencies to incorporate certain types of materials by reference. However, the governor, by executive order, has *mandated* agencies to incorporate where appropriate (see Executive Order, page [121](#)). The advantages of incorporating materials by reference include: (1) eliminating error that may be introduced when material is transcribed into rule format; (2) encouraging consistency in the state's implementation of the external requirements; (3) simplifying updates—the agency need only change a single date instead of retyping vast amounts of text; and (4) eliminating the expense of republishing material that is already publically available.

C. Materials that May Be Incorporated

The Rulemaking Act explicitly indicates what types of materials may be incorporated. Section 63-46a-3(7)(a) (see page [94](#)) provides that four types of materials may be incorporated by reference:

- an adopted code, adopted rule, or adopted regulation from a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;
- a state implementation plan mandated by the federal government for participation in the federal program;
- lists, tables, illustrations, or similar material that are subject to frequent change, provided the materials are fully described in the rule and available for public inspection; or
- lists, tables, illustrations, or similar material that the director of the Division of Administrative Rules determines are too expensive to reproduce in the administrative code.

If the material meets the statutory description, the rulewriter should consider incorporating that material by reference. However, since statute allows agencies to incorporate only certain types of materials, a rulewriter may not write segments of agency standards and procedures in an internal policy manual, and then merely incorporate the manual by reference. Prohibitions or regulating standards that fit the definition of a rule (Section 63-46a-3(2)), and that are *unique to Utah State Government*, may not be incorporated by reference and must be included in rule in its full text.

D. Incorporation Procedures

After an agency determines that it will incorporate materials by reference, it must follow the procedures outlined in Section 63-46a-7(b) and Section R15-3-3. The agency is required to:

- enact an incorporation by following rulemaking procedures;
- explicitly state that the material is “incorporated by reference”;
- state the date, issue, or version of the material being incorporated;
- describe substantive changes that appear in the materials incorporated as part of the “summary of rule or change” in the rule analysis;
- define specifically what material is incorporated by reference and identify any agency deviations from it by following rulemaking procedures; and
- maintain a complete and current copy of the referenced materials for public inspection at the agency and at the Division of Administrative Rules, while complying with copyright requirements.

Rulewriters should keep in mind that the courts have invalidated prospective incorporation by reference—open-ended incorporation statements that do not refer to a specific edition or source to which

the public may refer. Therefore, avoid phrases like, “as amended” or “including future amendments.” Whenever there is a substantive change in the material incorporated by reference that the agency intends to enforce, the agency must incorporate the new edition by following rulemaking procedures.

Because so many agencies incorporate provisions of the CFR, the Division maintains copies of the CFR published by the Government Printing Office on microfiche covering the years 1988 through the present. Therefore, the Division has satisfied the requirement for copies in this instance. However, if the agency incorporates a version of the CFR other than that produced by the Government Printing Office, the agency must provide the Division with a copy of the text to fulfill the requirements of the Act.

E. Incorporation Examples

Here are some examples of incorporation by reference statements.

INCORPORATING THE CODE OF FEDERAL REGULATIONS

R999-11-1. Purpose and Authority.

This rule incorporates by reference 24 CFR 570 (1996).

INCORPORATING THE CFR AND CHANGES PUBLISHED IN THE FR

R999-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22 (1993), as amended by 58 FR 46040 are incorporated by reference with the following amendments: . . .

INCORPORATING UNIFORM CODES

R999-56-4. Specific Editions of Uniform Building Standards.

(1) The division incorporates by reference the following Uniform Building Standards . . .:

(a) the 1994 edition of the Uniform Building Code (UBC) promulgated by the International Conference of Building Officials; and

(b) the 1996 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association.

INCORPORATING MATERIALS WITH AGENCY DEVIATIONS

R999-13-1. Land Disposal Restrictions.

The division incorporates by reference the requirements as found in 40 CFR 268 (1994), including Appendices IV, V, VI, VII, VIII, IX, and X as amended by 59 FR 43496, 59 FR 47980, 59 FR 47982, 60 FR 242, and 60 FR 25540, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44 and with the following exceptions:

(a) Substitute "Board" for all federal regulation references made to "Administrator" or "Regional Administrator" except for 40 CFR 268.40(b).

(b) Substitute the words "plan approval" for all federal references made to "permit".

(c) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

(d) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

INCORPORATING LIST, TABLES, ILLUSTRATIONS OR SIMILAR MATERIALS**R999-14-5a. Coding Table.**

This rule incorporates by reference the Department of Public Safety, Division of Driver License code violation tables, consisting of lists of violation codes published by the department as of November 1996. Copies of these coding tables are available at the division office and also at Division of Administrative Rules for public inspection.

XII. ORGANIZATION OF RULES**A. Organization of the Administrative Code**

The *Utah Administrative Code* is organized alphabetically by department, each department followed by a listing of its constituent agencies. In some cases, agencies are further subdivided. The Division assigns each agency an “R” number or title. The first department, for example, is the Department of Administrative Services, with a title for department “Administration.” It is Title R13. Its first agency, the Division of Administrative Rules is assigned Title R15, and so on. Rules enacted by an agency are therefore grouped together in a manner similar to a title in the statutory code. This is appropriate since each agency normally deals with a unique, but broad, subject. Individual rules, then, correspond to statutory chapters, since each should have a unique, specific subject.

There is no requirement on how to organize rules within the agency “title.” Agencies may arrange their rules chronologically (by order of adoption), by subject matter, by administrative organization of the agency, or some other sequence. While it is useful to keep some logical order, rules change far more frequently than do statutes and agencies would often have to rewrite their entire set to maintain perfect uniformity.

Two suggestions in organizing rules may prove helpful. The published version of the *Utah Administrative Code* indexes rules by their authorizing statute and by subject. Grouping rules around their enabling statutory citation or according to general subjects (“construction,” “inspection,” “traffic rules,” “violations,” etc.) will result in an easier-to-use index. Whatever pattern is used, the rulewriter should keep it as simple and consistent as possible; any system must account for future changes in administrative organization, additions, and deletions.

If a department is renamed, the Division will change the title designation. If a department reorganizes its divisions and agencies, the Title catchlines will be changed to reflect the reorganization, but the titles will not be renumbered.

B. Organization Within Rules

Because rules are as diverse as the agencies that make them, no single organization scheme will serve all instances. However, rules are extensions of their governing statutes. Therefore, rules should generally follow the patterns used in the statutory code.

A rule should begin with a general *purpose* section, outlining the intent and application of the rule, followed by a section identifying its statutory authorization.

R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63-46b-4 and 63-46a-5, and is enacted under the authority of Subsection 63-46a-10(1)(n) and Sections 63-46b-4, 63-46b-5, and 63-46b-21.

A *definitions* section, if necessary, should follow. Terms used throughout a rule should be defined in one section so that they are easy to find. If it is necessary to define terms in individual sections, those definitions should appear at the beginning of each section in which they are used. It will only confuse the reader if the drafter places a definition in one section somewhere in the middle of a rule, that describes a term used in another section. If the authorizing statute contains definitions, they may be referenced and definitions of other needed terms added.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63-46b-2.

(2) In addition, "division" means the Division of Administrative Rules.

The third and following sections should be the body of the rule. Each section should develop a separate subject such as "standards," "application procedure," "selection criteria," "notification," "appeals," and "penalties." Sections should be arranged in a logical sequence of descending importance.

C. Numbering Rules**1. Title Numbering**

Rule numbering follows a pattern similar to statute numbering. The three-part citation tells the reader the agency, the rule number, and section. Each rulemaking organization in state government is assigned a unique "R" number (see Appendix J, page [149](#), for a complete list of agency numbers). Therefore, the rulewriter will normally use the same first number for every rule. When the name of an agency changes, either because of legislation or administrative reorganization, the rulewriter should notify the Division in writing.

2. Rule and Section Numbering

The rule number, which follows the R number and a hyphen, is limited to *three* characters. The section number, following another hyphen, is limited to *five* characters. Because of the computer logic and coding, rule and section designations must be at least one Arabic number

greater than zero (for example, Section R15-1-1). The Arabic number may be followed by a letter (for example, Section R562-1f-1a). Variations of this format are not permitted.

The Division uses computers to manage and publish Utah's administrative rules. When rules are codified, the computer sorts rules based on the citation. An agency will find that its rules do not appear in the order it intended if this standard is not followed.

INCORRECT	CORRECT
501-1-5	R501-1-5
R513-201.105	R513-201-105
R. 574-34	R574-34
R51 -9 -1	R51-9-1
R414-032-0	R414-32-1
R414-A2	R414-2A
R414-2A8	R414-2A-8
R432-150A	R432-15A
R-513-204	R513-204
R51-47212-23112b	R51-472-2311b
R920-1.1-14.001	R920-1a-14a
R156-66-604aa	R156-66-605a

If an agency chooses to use a letter as part of one rule number (i.e., R414-2A), it may not number another rule using three digits (i.e., R414-500). Likewise, if an agency chooses to use a letter as part of one section number (i.e., R156-55c-1302c), it may not number another section in any of its rules using five digits (i.e., R156-55c-10001). When the two numbering styles are mixed, computers will not correctly sort the agency's rules.

INTENDED SORT ORDER	ACTUAL SORT ORDER
R156-66-604a.	R156-66-604a.
R156-66-604b.	R156-66-604aa.
R156-66-604c.	R156-66-604b.
R156-66-604d.	R156-66-604bb.
R156-66-604e.	R156-66-604c.
R156-66-604f.	R156-66-604cc.
R156-66-604g.	R156-66-604d.
R156-66-604h.	R156-66-604dd.
* * * * *	R156-66-604e.
R156-66-604y.	R156-66-604ee.
R156-66-604z.	R156-66-604f.
R156-66-604aa.	R156-66-604g.
R156-66-604bb.	R156-66-604h.
R156-66-604cc.	* * * * *
R156-66-604dd.	R156-66-604y.
R156-66-604ee.	R156-66-604z.

The computer will always read left to right and sort rules numerically, then alphabetically, by the agency, rule, then section numbers. The drafter should organize rules and sections accordingly. *The simpler the system, the less confusing it is to the reader.*

3. Subsection (Paragraph) Numbering

To date, internal numbering (paragraph numbering) has been left to the discretion of the rule drafters. The result is a hodgepodge of internal numbering systems. The Division recommends the following internal numbering system, which is the same system used in statute.

R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

The rulewriter should avoid dividing sections into units smaller than a subsection such as "Subsection R56-1-1(2)" or "Subsection R56-1-1(2)(a)." When further division is absolutely necessary, however, rulewriters may follow the statutory system of citing the lower case Roman numeral, the capital letter, then the upper case Roman numeral, all enclosed by parentheses: "Subsection R56-1-1(2)(a)(i)(A)(I)." References to these subdivisions are always "subsections," to avoid confusion and maintain simplicity. This numbering system, as developed and implemented by the legislature, allows outlines to extend to a maximum of five levels.

PARAGRAPH NUMBERING LEVELS

R1-1-101 Example.

(1) . . .
(a) . . .
(b) . . .
(i) . . .
(ii) . . .
(A) . . .
(B) . . .
(I) . . .
(II) . . .
(2) . . .

GRAPHICAL ILLUSTRATION OF PARAGRAPH NUMBERING LEVELS

R1-1-101 Example.

(1) . . .
(a) . . .
(b) . . .
(i) . . .
(ii) . . .
(A) . . .
(B) . . .
(I) . . .
(II) . . .

(2) . . .
(Note: multiple indentations are not allowed in rules)

Currently, rulewriters are encouraged to renumber within existing definition sections to alphabetize the section. However, in situations other than reordering definition sections, rulewriters must use great care. Rearranging subsections makes it difficult to compare sections

by computer to look for potential conflicts or unmarked changes. Also, it is possible that by rearranging the subsections, the change inadvertently changes the substance of the section. This change in meaning may be difficult to catch.

If the rulewriter is amending a section of a rule in which the subsections are numbered in a different manner and the rulewriter is going to change the number to be consistent with this form, the rulewriter must check cross-references to determine if that particular subsection is referenced in any other sections of the code. The rulewriter must then change all other references to conform with the new numbering. If cross-references appear in another title of the administrative code, the rulewriter should notify the other agency of the pending change. The rulewriter should also check any relevant case law to determine whether that specific subsection is mentioned in a court opinion. If that is the case, the rulewriter may want to consider leaving the whole section and the affected subsection as it is currently numbered to preserve the legal history of the subsection even though the result may be inconsistent with this general drafting guideline.

While consistency throughout the *Utah Administrative Code* is desirable, because consistency makes the code easier to use, it is most important that subsection numbering be consistent within a rule and a title.

D. Reusing Rule and Section Numbers

In general, the drafter should not use the number of a section that has been repealed to enact new unrelated material. This leads to a confusing history for those newly enacted provisions that have no relation to the old, repealed provisions. Similarly, it is preferable to create a new rule rather than enact unrelated subject matter under a repealed rule's number. However, if the new section or rule is related in subject matter to the old section or rule, it is appropriate to use the number of the repealed section or rule.

XIII. TEXT FORMATTING STANDARDS: A COMPREHENSIVE CHECK LIST

Rules must adhere to a precise format. The format is not designed for aesthetics, rather for utility and economy. A consistent format makes rules: (1) easier to use in conjunction with the statutory code; (2) less expensive to print or maintain in a searchable database; and (3) compatible with multiple computer systems—allowing rules to be transferred between dissimilar systems and programs without loss or distortion of data. The state's rulemaking process will function efficiently and economically only if nearly all operations (such as filing, publication, database entry, code production) can be automated. For purposes of drafting, disseminating for public comment, inserting in agency manuals, reprinting, or other uses, agencies are free to use any desirable format—as long as the official text, catchlines, and numbering are not altered.

When preparing rules for filing with the Division of Administrative Rules and publication in the *Utah State Bulletin*, agencies should use items A through I below as a check list. Appendix H, page [141](#), provides an example of a correctly formatted rule as it would appear on paper and on a computer screen (in WordPerfect's Reveal Codes format). This will ensure that the Division of Administrative Rules does not return a rule or change to the agency for text corrections, possibly delaying publication.

A. Presentation

Presentation involves how the text of a rule appears on the page.

- ☐ Pages appear in portrait orientation (horizontally 8.5", vertically 11").
- ☐ Pages are not numbered.
- ☐ Pages do not contain text in headers (see "Preparing the Proposed Rule," page 17).
- ☐ Pages do not contain text in footers or watermarks.
- ☐ Margins are set at one inch on the left, right, top and bottom of the page.
- ☐ Text is single spaced.
- ☐ A rule includes:
 - ☐ one title number/catchline (for example, "**R15. Administrative Services, Administrative Rules.**");
 - ☐ one rule number/catchline (for example, "**R15-2. Public Petitioning for Rulemaking.**") ; and
 - ☐ a section number/catchline (for example, "**R15-2-2. Definitions.**") for each section of the rule.
- ☐ Each section contains text.
- ☐ Rules and sections may be reserved, provided the word "Reserved" appears in the catchline and on the first line following the catchline and a tab. Numbering schemes do not need to be consecutive.
- ☐ One tab must be used to begin each paragraph.

B. Rule Citation/Reference Numbers

Administrative rule citations are critical because they tell the reader where they are within the organization of an administrative rule. More importantly, however, citations are the tool that allows the reader to reference a specific passage of an administrative rule so that others may find the same passage. Administrative rules in Utah contain four levels of citation.

1. The title ("R") number (for example, "**R15.**") indicates the agency that wrote the rule. The title number:
 - ☐ is assigned by the Division of Administrative Rules (see Appendix J, page 149);
 - ☐ may be changed by the Division of Administrative Rules to accommodate reorganizations in state government;
 - ☐ contains an "R" followed by a maximum of three numerical characters;
 - ☐ is followed by a period; and
 - ☐ appears in boldface type.
2. The rule number (for example, "**R15-2.**") :
 - ☐ is preceded by the agency "R" number and a hyphen;
 - ☐ may use a maximum of three characters:
 - ☐ the first character must be numerical other than zero,
 - ☐ the last character may be alphabetical provided it is preceded by a number greater than zero, and that no other agency rule is numbered using three digits;
 - ☐ is followed by a period; and
 - ☐ appears in boldface type.

3. The section number (for example, “**R15-2-2.**”) is the fundamental unit of organization in the administrative code. Each section:

- ☐ is preceded by the agency “R” number, a hyphen, a rule number, and a hyphen;
- ☐ may use a maximum of five characters:
 - ☐ the first character must be numerical,
 - ☐ the last character may be alphabetical provided it is preceded by a number greater than zero, and that no other agency rule section is numbered using five digits, and
 - ☐ zeros may not precede (pad) the section number;
- ☐ is followed by a period; and
- ☐ appears in boldface type.

4. Paragraph or subsection numbers:

- ☐ use a consistent scheme throughout an agency’s rules;
- ☐ are followed by two spaces;
- ☐ should follow the predominant paragraph numbering scheme in the statutory code (for example, (1)(a)(i)(A)(I)); and
- ☐ should not be subdivided more than two levels, and never more than five levels.

C. Catchlines

Following the title, rule, and section numbers, the rulewriter identifies the agency writing the rule or briefly describes the topic addressed. Catchlines:

- ☐ follow the title, rule, and section numbers;
- ☐ are preceded by two spaces (for example, “ **Definitions.**”);
- ☐ provide a brief description of the text *without* using unnecessary phrases like “Rules for,” “Rules of,” or “for the State of Utah”;
- ☐ are capitalized like the title of a book—with significant words beginning with upper-case letters;
- ☐ are followed by a period;
- ☐ are *not* enforceable as part of the rule text; and
- ☐ appear in boldface type.

D. Text

Citations and catchlines organize the substance of rules—the text. What the rule text says is up to the rulewriting agency, based on its legal authority to regulate. However, the text formatting requirements are established by the Division of Administrative Rules. Rule text:

- ☐ appears beneath a section number and catchline;
- ☐ is divided into paragraphs—each paragraph beginning with a tab and ending with a hard return;
- ☐ is separated from the next section of text or the annotations by one blank line;
- ☐ uses words, not symbols, to express concepts, measurements, and relationships;
- ☐ begins with a paragraph number or letter, typically in parenthesis (see page 83), followed by two spaces (for example, “(b) the name of the adjudicative proceeding . . .”);
- ☐ does not include symbols, characters created with the WordPerfect Compose feature, or any characters not found in the *Standard ASCII Character Set* (see page 65—consult your word

processing manual or contact the Division of Administrative Rules for a standard ASCII character set list);

- ☐ uses characters for their intended purpose (for example, the letter “l” may not be used as the number “1” even though they may look identical when printed with a particular font);
- ☐ does not contain hard return codes, line break codes, or words hyphenated to facilitate breaks at the right margin of the page;
- ☐ does not include graphics, charts or maps (however, graphics, charts and maps may be incorporated by reference); and
- ☐ is free of typographical and grammatical errors (run spell check).

E. Tables

Maps, charts, graphs, diagrams, illustrations, drawings, forms, or similar materials are prohibited in rules (Section R15-3-4), but may be incorporated by reference (see page 77). The Division of Administrative Rules allows agencies to include textual tables. An illustration of a correctly-formatted table is provided in Appendix H, page 141. Tables must:

- ☐ be preceded by:
 - ☐ one blank line;
 - ☐ the word “TABLE” in capital letters centered across the page,
 - ☐ an Arabic number when more than one table appears in a rule, and
 - ☐ a table title centered above the table, separated from the table by one blank line;
- ☐ not exceed 60 characters in width from the left margin;
- ☐ generally be comprised of columns;
- ☐ use spaces, not tabs, to define and separate columns;
- ☐ not exceed 20 columns;
- ☐ contain data confined to the parameters of the column (data from one column may not run into another column); and
- ☐ be followed by a center code and a hard return.

F. Footnotes and Endnotes

Footnotes (notes that appear at the bottom of a page) may not be used in administrative rules. The use of endnotes in administrative rules is discouraged. If information is important enough to include in a rule, it should be included in the regular text of the rule. If endnotes must be used, they may appear:

- ☐ as numbers surrounded by parentheses, not superscripted numbers, symbols, or word processing codes that automatically generate references;
- ☐ directly beneath a table when describing components of a table, separated from the table by a blank line and separated from the text following the table by a center code and a hard return; and
- ☐ as endnotes at the end of the section in which the notes appear, separated from the text of the section by one blank line.

G. End Matter

The information that appear at the end of each rule include: indexing terms, the date of last substantive amendment, notice of continuation, and indexing citations.

1. Indexing terms:

- ☐ appear at the end of each rule after the last section;
- ☐ appear in boldface type;
- ☐ are preceded by one blank line and the word “KEY” followed by a colon and two blank spaces;
- ☐ consist of no more than four terms found in *Key Words for the Utah Administrative Code*;
- ☐ contain at least one term that describes the primary topic of the rule;
- ☐ should be used sparingly;
- ☐ may contain up to two terms not found in the *Key Words for Utah Administrative Code*, as long as each term is followed by an asterisk; and
- ☐ appear in lower case letters.

2. Indexing citations:

- ☐ appear flush right across from the “year of last amendment”;
- ☐ may include additional citations added beneath the first statute citation, located beneath the previous citation(s) flush right from the left margin; and
- ☐ appears in boldface type.

3. History—Year of last substantive amendment:

- ☐ appears on the line beneath the indexing terms;
- ☐ appears at the left margin;
- ☐ appears in boldface type;
- ☐ indicates the date on which the last substantive amendment to the rule became effective; and
- ☐ includes a “Notice of Continuation” notation for rules that have been reviewed under the provisions of Section 63-46a-9:
 - ☐ appears on the line beneath the date of last substantive amendment;
 - ☐ appears at the left margin;
 - ☐ appears in boldface type;
 - ☐ states “Notice of Continuation,” followed by the date of review.

H. Special Formatting

Personal computers and word processing programs allow users many added features that enhance the presentation of information. Most of these special formatting features, however, must be displayed and printed with the same program used to create the effect. Since rules are exchanged between different computer systems and programs, rules must be prepared in a plain format so that data is not lost nor distorted.

Special formatting functions:

- ☐ may not be used within rule text, except as otherwise provided in this manual; and
- ☐ include the following as examples:
 - ☐ boldface type;
 - ☐ underlining to show anything other than the addition of new text;
 - ☐ italics;
 - ☐ changes in type face or font size;
 - ☐ headers or footers;

- ☐ WordPerfect tables;
- ☐ generated cross-references, tables of content, outlines, or indexes;
- ☐ footnotes or endnotes;
- ☐ block protection or conditional end of page commands;
- ☐ column formatting; and
- ☐ line drawings.

I. Changes to Rule Text

Laws governing the creation and amendment of administrative rules require that additions be underlined, and deletions be struck out and surrounded by brackets (Subsections 63-46a-4(2), and Section R15-4-9). See “Amended Rule in Format,” Appendix H, page [141](#), for an example.

- ☐ New rules shall be completely underlined.
- ☐ New language added to existing rules shall be underlined.
- ☐ Deleted language shall be struck out *and* surrounded by brackets (for example, [~~deleted~~]).
- ☐ Repealed rules are completely struck out AND surrounded by brackets.

APPENDICES

- Appendix A: Utah Administrative Rulemaking Act
- Appendix B: Administrative Procedures Act
- Appendix C: Administrative Rules on Rulemaking
- Appendix D: Related Executive Orders
- Appendix E: Utah Cases Concerning Administrative Rulemaking
- Appendix F: The Rulemaking Process (Flow Charts)
- Appendix G: Rulemaking Forms
- Appendix H: Sample Rule in Format
- Appendix I: Rulemaking Time Frames
- Appendix J: List of Agency Code Numbers
- Appendix K: Indexing Information—Standard Industrial Classification (SIC) Codes
- Appendix L: Preferred Terms
- Appendix M: Problem Words and Expressions Defined

I. APPENDIX A: UTAH ADMINISTRATIVE RULEMAKING ACT**Utah Administrative Rulemaking Act***Utah Code Title 63, Chapter 46a (1998)***63-46a-1. Short title.**

This act is known as the "Utah Administrative Rulemaking Act."

(as enacted by 1985 Utah Laws 158)

63-46a-2. Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including copies of:

- (a) the proposed rule, change in the proposed rule, and the rule analysis form;
- (b) the public comment received and recorded by the agency during the public comment period;
- (c) the agency's response to the public comment;
- (d) the agency's analysis of the public comment;
- and
- (e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9) (a) "File" means to submit a document to the division as prescribed by this chapter.

(b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

(13) (a) "Policy" means a statement applying to persons or agencies that:

- (i) broadly prescribes a future course of action, guidelines, principles, or procedures; or
- (ii) prescribes the internal management of an agency.

(b) A policy is a rule if it conforms to the definition of a rule.

(14) "Publication" means making a rule available to the public by printing the rule or a summary of the rule in the bulletin.

(15) "Publication date" means the inscribed date of the bulletin.

(16) (a) "Rule" means an agency's written statement that:

- (i) is explicitly or implicitly required by state or federal statute or other applicable law;
- (ii) has the effect of law;
- (iii) implements or interprets a state or federal legal mandate; and
- (iv) applies to a class of persons or another agency.

(b) "Rule" includes the amendment or repeal of an existing rule.

(c) "Rule" does not mean:

- (i) orders;
- (ii) unenforceable policies;
- (iii) internal management policies of the agency that do not restrict the legal rights of a class of persons or another agency;
- (iv) the governor's executive orders or proclamations;
- (v) opinions issued by the attorney general's office;
- (vi) declaratory rulings issued by the agency according to the provisions of Section 63-46b-21 except as required by Section 63-46a-3; or
- (vii) rulings by an agency in adjudicative proceedings, except as required by Subsection 63-46a-3 (6).

(17) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.

(18) "Substantive change" means a change in a rule that affects the application or results of agency actions.
(as last amended by 1996 Utah Laws 60)

63-46a-3. When rulemaking is required.

- (1) Each agency shall:
 - (a) maintain a complete copy of its current rules; and
 - (b) make it available to the public for inspection during its regular business hours.
- (2) In addition to other rulemaking required by law, each agency shall make rules when agency action:
 - (a) authorizes, requires, or prohibits an action;
 - (b) provides or prohibits a material benefit;
 - (c) applies to a class of persons or another agency; and
 - (d) is explicitly or implicitly authorized by statute.
- (3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.
- (4) Rulemaking is not required when:
 - (a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;
 - (b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;
 - (c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or
 - (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the division.
- (5) A rule shall enumerate any penalty authorized by statute that may result from its violation.
- (6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.
- (7) (a) Each agency may enact a rule that incorporates by reference:
 - (i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally-recognized organization or association;
 - (ii) state agency implementation plans mandated by the federal government for participation in the federal program;
 - (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or

(iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

- (i) be enacted according to the procedures outlined in this chapter;
- (ii) state that the referenced material is incorporated by reference;
- (iii) state the date, issue, or version of the material being incorporated; and
- (iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material available for public inspection at the agency and at the division.

(8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

(as last amended by 1998 Utah Laws 332 (S.B. 86), effective July 1, 1998)

63-46a-4. Rulemaking procedure.

(1) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or repealing a rule agencies shall comply with:

- (a) the requirements of this section;
- (b) consistent procedures required by other statutes;
- (c) applicable federal mandates; and
- (d) rules made by the division to implement this chapter.

(2) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(3) (a) Each agency shall file its proposed rule and rule analysis with the division.

(b) (i) Rule amendments shall be marked with new language underlined and deleted language struck out.

(ii) Alternatively, the repeal of an entire rule may be indicated by annotating the rule "repealed in its entirety" prominently on every page.

(c) (i) The division shall publish the information required under Subsection (3) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

- (ii) For rule amendments, only the section or subsection of the rule being amended need be printed.
- (iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.
- (4) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.
- (5) The rule analysis shall contain:
 - (a) a summary of the rule or change;
 - (b) the purpose of the rule or reason for the change;
 - (c) the statutory authority or federal requirement for the rule;
 - (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments; and
 - (iii) other persons;
 - (e) the compliance cost for affected persons;
 - (f) how interested persons may inspect the full text of the rule;
 - (g) how interested persons may present their views on the rule;
 - (h) the time and place of any scheduled public hearing;
 - (i) the name and telephone number of an agency employee who may be contacted about the rule;
 - (j) the name of the agency head or designee who authorized the rule;
 - (k) the date on which the rule may become effective following the public comment period; and
 - (l) comments by the department head on the fiscal impact the rule may have on businesses.
- (6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
 - (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
 - (ii) a summary of new substantive provisions appearing only in the enacted rule.
- (b) The summary required under this subsection is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.
- (7) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.
- (8) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.
- (9) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule becomes effective on any date specified by the agency that is no fewer than 30 nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.

(d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.

(as last amended by 1998 Utah Laws 219 (S.B. 88), effective May 4, 1998)

63-46a-5. Public hearings.

(1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.

(2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:

- (a) a public hearing is required by state or federal mandate;
- (b) (i) another state agency, ten interested persons, or an interested association having not fewer than ten members request a public hearing; and

(ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.

(3) The agency shall hold the hearing:

- (a) before the rule becomes effective; and
- (b) no less than seven days nor more than 30 days after receipt of the request for hearing.

(as last amended by 1987 Utah Laws 241)

63-46a-6. Changes in rules.

(1) (a) To change a proposed rule already published in the bulletin, an agency shall file with the division:

- (i) a copy of the changed rule; and
- (ii) a rule analysis containing a description of the change and the information required by Section 63-46a-4.

(b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.

(c) The division shall publish the rule analysis for the changed rule in the bulletin.

(d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.

(e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the division within 120 days of publication of the last change in proposed rule.

(2) If the rule change is nonsubstantive:

- (a) the agency need not comply with the requirements of Subsection (1); and
- (b) the agency shall notify the division of the change in writing.

(3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63-46a-4.

(as last amended by 1996 Utah Laws 60)

63-46a-7. Exceptions to rulemaking procedure.

(1) All agencies shall comply with the rulemaking procedures of Section 63-46a-4 unless an agency finds that these procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law.

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

- (i) a copy of the rule; and
- (ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The division shall publish the rule in the bulletin as provided in Subsection 63-46a-4(3).

(c) The agency shall notify interested persons as provided in Subsection 63-46a-4(7).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63-46a-4.

(as last amended by 1998 Utah Laws 219 (S.B. 88), effective May 4, 1998)

63-46a-8.

(repealed by 1992 Utah Laws 146)

63-46a-9. Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

(1) Each agency shall review each of its rules within five years of the rule's original effective date or within five years of the filing of the last five-year review, whichever is later. Rules effective prior to 1992 need not be reviewed until 1997.

(2) An agency may consider any substantial review of a rule to be a five-year review. If the agency chooses to consider a review a five-year review, it shall follow the procedures outlined in Subsection (3).

(3) At the conclusion of its review, the agency shall file a notice of review on or before the anniversary date indicating its intent to continue, amend, or repeal the rule.

(a) If the agency continues the rule, it shall file a statement which includes:

- (i) a concise explanation of the particular statutory provisions under which the rule is

enacted and how these provisions authorize or require the rule;

(ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and

(iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

(b) If the agency repeals the rule, it shall comply with Section 63-46a-4.

(c) If the agency amends and continues the rule, it shall comply with the requirements of Section 63-46a-4 and file the statement required in Subsection (3)(a).

(4) (a) The division shall publish the notice and statement in the bulletin.

(b) The division may schedule the publication of agency notices and statements, provided that no notice and statement shall be published more than one year after the review deadline established under Subsection (1).

(5) The division shall notify an agency of rules due for review at least 180 days prior to the anniversary date.

(6) If an agency finds that it will not meet the deadline established in Subsection (1):

(a) the agency may file an extension prior to the anniversary date with the division indicating the reason for the extension; and

(b) the division shall publish notice of the extension in the next issue of the bulletin.

(7) An extension permits the agency to file a notice no more than 120 days after the anniversary date.

(8) If an agency fails to file a notice of review or extension on or before the date specified in the notice mandated in Subsection (5), the division shall:

(a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;

(b) remove the rule from the code; and

(c) notify the agency that the rule has expired.

(9) After a rule expires, an agency must comply with the requirements of Section 63-46a-4 to reenact the rule.

(10) (a) Rules issued under the following provisions related to the Department of Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to the requirements of this section until July 1, 1998:

- (i) Title 34, Labor in General;
- (ii) Title 34A, Utah Labor Code;
- (iii) Title 35A, Utah Workforce Services Code;
- (iv) Title 40, Chapter 2, Coal Mines; and
- (v) Title 57, Chapter 21, Utah Fair Housing Act.

(b) Any rule described in Subsection (10)(a) that would have expired on or after July 1, 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule

the Department of Workforce Services or Labor Commission files:

- (i) the notice of review, described in Subsection (3); or
- (ii) an extension described in Subsection (6).

(as last amended by 1998 Utah Laws 13 (S.B. 125), effective May 4, 1998; and 1998 Utah Laws 332 (S.B. 86), effective July 1, 1998)

63-46a-9.5. Division of Administrative Rules created -- Appointment of director.

(1) There is created within the Department of Administrative Services the Division of Administrative Rules, to be administered by a director.

(2) The director of administrative rules shall be appointed by the executive director with the approval of the governor.

(as enacted by 1987 Utah Laws 241)

63-46a-9.6. Utah Administrative Code -- Organization - Official compilation.

(1) The Utah Administrative Code shall be divided into three parts:

- (a) titles, whose number shall begin with "R";
- (b) rules; and
- (c) sections.

(2) All sections contained in the code are referenced by a three-part number indicating its location in the code.

(3) The division shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the division is considered the correct, current version.

(as last amended by 1996 Utah Laws 60)

63-46a-10. Division of Administrative Rules -- Duties generally.

(1) The Division of Administrative Rules shall:

- (a) establish all filing, publication, and hearing procedures necessary to make rules under this chapter;
- (b) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;
- (c) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;
- (d) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the division may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to a copy on file;
- (e) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;
- (f) publish a digest, at least monthly, summarizing all rules and notices printed in the most recent bulletin;

(g) publish at least annually an index of all changes to the administrative code and the effective date of each change;

(h) print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter;

(i) distribute without charge copies of the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;

(j) distribute without charge copies of the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;

(k) distribute, at prices covering all costs, all rulemaking publications to all other requesting persons and agencies;

(l) provide agencies assistance in rulemaking; and

(m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.

(2) The division may after notifying the agency make nonsubstantive changes to rules filed with the division or published in the bulletin or code by:

- (a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;
- (b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
- (c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
- (d) updating or correcting annotations associated with a section, part, rule, or title; and
- (e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(3) In addition, the division may make the following nonsubstantive changes with the concurrence of the agency:

- (a) eliminate duplication within rules;
- (b) eliminate obsolete and redundant words; and
- (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:

- (a) the affected code citation;
- (b) a brief description of the change; and
- (c) the date the change was made.

(5) All funds appropriated or collected for publishing the division's publications shall be nonlapsing.

(as last amended by 1996 Utah Laws 60)

63-46a-10.5. Repeal and reenactment of Utah Administrative Code.

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

- (a) reorganize, reformat, and renumber the code;
- (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63-46a-6; and
- (c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- (b) eliminating duplication;
- (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
- (d) eliminating all obsolete or redundant words;
- (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
- (f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
- (g) updating or correcting annotations associated with a section, part, rule, or title; and
- (h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:

- (i) notice of the code reenactment;
- (ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
- (iii) locations where the proposed reenactment of the code may be inspected; and
- (iv) agency summaries of substantive changes in the reenacted code.

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

- (i) make copies of their reenacted rules available for public inspection during regular business hours; and
- (ii) comply with the requirements of Subsection 63-46a-4(7).

(5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (3)(a).

(6) The division shall distribute complete copies of the proposed code reenactment without charge to:

- (a) state-designated repositories in Utah;
- (b) the Administrative Rules Review Committee; and
- (c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for a review of all agency rules.

(as last amended by 1998 Utah Laws 219 (S.B. 88), effective May 4, 1998)

63-46a-11. Administrative Rules Review Committee.

(1) (a) There is created an Administrative Rules Review Committee of ten permanent members and four ex officio members.

(b) (i) The committee's permanent members shall be composed of five members of the Senate, appointed by the president of the Senate, and five members of the House, appointed by the speaker of the House, with no more than three senators and three representatives from the same political party.

(ii) The permanent members shall convene at least once each month as a committee to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules. Meetings may be suspended at the discretion of the committee chairs.

(iii) Members shall serve for two-year terms or until their successors are appointed.

(iv) A vacancy exists whenever a committee member ceases to be a member of the Legislature, or when a member resigns from the committee. Vacancies shall be filled by the appointing authority, and the replacement shall serve out the unexpired term.

(c) When the committee reviews existing rules, the committee's permanent members shall invite the Senate and House chairmen of the standing committee and the Senate and House chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.

(d) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(2) Each agency rule as defined in Section 63-46a-2 shall be submitted to the committee at the same time public notice is given under Section 63-46a-4.

(3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

(b) The committee shall examine rules submitted by each agency to determine:

- (i) whether or not they are authorized by statute;
- (ii) whether or not they comply with legislative intent;
- (iii) their impact on the economy and the government operations of the state and local political subdivisions; and
- (iv) their impact on affected persons.

(c) To carry out these duties, the committee may examine any other issues that it considers necessary. The committee may also notify and refer rules to the chairmen of the interim committee which has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(d) In reviewing the rules, the committee shall follow generally accepted principles of statutory construction.

(4) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(5) In order to accomplish its oversight functions, the committee has all the powers granted to legislative interim committees as set forth in Section 36-12-11.

(6) (a) The committee may prepare written findings of its review of each rule and may include any recommendations, including legislative action.

(b) The committee shall provide to the agency that enacted the rule:

- (i) a copy of its findings, if any; and
- (ii) a request that the agency notify the committee of any changes it makes in the rule.

(c) The committee shall provide a copy of its findings to any member of the Legislature and to any person affected by the rule who requests a copy.

(d) The committee shall provide a copy of its findings to the presiding officers of both the House and the Senate, Senate and House chairmen of the standing committee, and the Senate and House chairmen of the Appropriation Subcommittee that have jurisdiction over the agency whose rules are the subject of the findings.

(7) (a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.

(b) The report shall include:

- (i) the findings and recommendations made by the committee under Subsection (6);
- (ii) any action taken by an agency in response to committee recommendations; and
- (iii) any recommendations by the committee for legislation.

(as last amended by 1998 Utah Laws 332 (S.B. 86), effective July 1, 1998)

63-46a-11.5. Legislative reauthorization of agency rules -- Extension of rules by governor.

(1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.

(2) (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.

(b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire if:

- (i) the rule is explicitly mandated by a federal law or regulation; or
- (ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.

(3) (a) The Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session.

(b) The omnibus legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:"

(c) Before sending the legislation to the governor for his action, the Administrative Rules Review Committee may send a letter to the governor and to the agency explaining specifically why the committee believes any rule should not be reauthorized.

(d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by the Legislature.

(4) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.

(5) (a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the rule beyond the expiration date.

(b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:

- (i) that the rule is necessary; and
- (ii) a citation to the source of its authority to make the rule.

(c) (i) If the governor finds that the necessity does exist, and that the agency has the authority to make the rule, he may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.

(ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.

(d) If the omnibus bill required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (5)(b) and (c).

(as last amended by 1998 Utah Laws 332 (S.B. 86), effective July 1, 1998)

63-46a-12. Interested parties.

(1) An interested person may petition an agency requesting the making, amendment, or repeal of a rule.

(2) The division shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.

(3) A statement shall accompany the proposed rule, or amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.

(4) Within 30 days after submission of a petition, the agency shall either deny the petition in a writing stating its reasons for the denial, or initiate rulemaking proceedings in accordance with Section 63-46a-4.

(as last amended by 1987 Utah Laws 241)

63-46a-12.1. Judicial challenge to administrative rules.

(1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63-46a-3 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2) (a) Except as provided in Subsection (b), a person seeking judicial review under this section shall exhaust his administrative remedies by complying with the requirements of Section 63-46a-12 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust his administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63-46a-12; or

(iii) compliance with Section 63-46a-12 would cause the person irreparable harm.

(3) (a) Besides the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

(i) the name and mailing address of the plaintiff;

(ii) the name and mailing address of the defendant agency;

(iii) the name and mailing address of any other party joined in the action as a defendant;

(iv) a copy of the rule or proposed rule, if any;

(v) an allegation that he has either exhausted the administrative remedies by complying with Section 63-46a-12 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);

(vi) the relief sought; and

(vii) factual and legal allegations supporting the relief sought.

(b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.

(ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.

(iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.

(4) The district court may grant relief to the petitioner by:

(a) declaring the rule invalid, if the court finds that:

(i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;

(ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or

(iii) the agency did not follow proper rulemaking procedure;

(b) declaring the rule nonapplicable to the petitioner;

(c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;

(d) ordering the agency to comply with Section 63-46a-3;

(e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or

(f) any combination of Subsections (a) through (e).

(5) If the plaintiff meets the requirements of Subsection (2)(b) the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63-46a-12.

(as enacted by 1990 Utah Laws 224)

63-46a-13.

(repealed by 1990 Utah Laws 224)

63-46a-14. Time for contesting a rule -- Statute of limitations.

(1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.

(2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.

(3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63-46a-10(2) or (3) substantively changed the rule shall be commenced

within two years of the date the change was made.

(as last amended by 1998 Utah Laws 332 (S.B. 86), effective July 1, 1998)

63-46a-16. Utah Administrative Code as official compilation of rules -- Judicial notice.

The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

(as last amended by 1992 Utah Laws 261)

II. APPENDIX B: ADMINISTRATIVE PROCEDURES ACT

Administrative Procedures Act

Utah Code Title 63, Chapter 46b (1997)

63-46b-0.5. Short title.

This act is known as the "Administrative Procedures Act."

63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of these actions.

(2) This chapter does not govern:

(a) the procedures for making agency rules, or the judicial review of those procedures or rules;

(b) the issuance of any notice of a deficiency in the payment of a tax, the decision to waive penalties or interest on taxes, the imposition of and penalties or interest on taxes, or the issuance of any tax assessment, except that this chapter governs any agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of those actions;

(c) state agency actions relating to extradition, to the granting of pardons or parole, commutations or terminations of sentences, or to the rescission, termination, or revocation of parole or probation, to actions and decisions of the Psychiatric Security Review Board relating to discharge, conditional release, or retention of persons under its jurisdiction, to the discipline of, resolution of grievances of, supervision of, confinement of, or the treatment of inmates or residents of any correctional facility, the Utah State Hospital, the Utah State Developmental Center, or persons in the custody or jurisdiction of the Division of Mental Health, or persons on probation or parole, or judicial review of those actions;

(d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;

(e) applications for employment and internal personnel actions within an agency concerning its own employees, or judicial review of those actions;

(f) the issuance of any citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Chapter 55, Utah Construction Trades Licensing Act, except that this chapter governs any agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency actions relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of those actions;

(h) state agency actions under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions; and Title 7, Chapter 2, Possession of Depository Institution by Commissioner; Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies; and Title 63, Chapter 30, Utah Governmental Immunity Act, or judicial review of those actions;

(i) the initial determination of any person's eligibility for unemployment benefits, the initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency actions relating to the distribution or award of monetary grants to or between governmental units, or for research, development, or the arts, or judicial review of those actions;

(k) the issuance of any notice of violation or order under Title 26, Chapter 8, Utah Emergency Medical Services System Act; Title 19, Chapter 2, Air Conservation Act; Title 19, Chapter 3, Radiation Control Act; Title 19, Chapter 4, Safe Drinking Water Act; Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 4, Underground Storage Tank Act; or Title 19, Chapter 6, Part 7, Used Oil Management Act, except that this chapter governs any agency action commenced by any person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency actions, to the extent required by federal statute or regulation to be conducted according to federal procedures;

- (m) the initial determination of any person's eligibility for government or public assistance benefits;
 - (n) state agency actions relating to wildlife licenses, permits, tags, and certificates of registration;
 - (o) licenses for use of state recreational facilities; and
 - (p) state agency actions under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603.
- (3) This chapter does not affect any legal remedies otherwise available to:
- (a) compel an agency to take action; or
 - (b) challenge an agency's rule.
- (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:
- (a) requesting or ordering conferences with parties and interested persons to:
 - (i) encourage settlement;
 - (ii) clarify the issues;
 - (iii) simplify the evidence;
 - (iv) facilitate discovery; or
 - (v) expedite the proceedings; or
 - (b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.
- (5) (a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by this chapter, except as explicitly provided in that section.
- (b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are governed by this chapter.
- (6) This chapter does not preclude an agency from enacting rules affecting or governing adjudicative proceedings or from following any of those rules, if the rules are enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of this chapter.
- (7) (a) If the attorney general issues a written determination that any provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of those provisions to that agency shall be suspended to the extent necessary to prevent the denial.
- (b) The attorney general shall report the suspension to the Legislature at its next session.
- (8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.
- (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening any time period prescribed in this chapter, except those time periods established for judicial review.

63-46b-2. Definitions.

- (1) As used in this chapter:
- (a) "Adjudicative proceeding" means an agency action or proceeding described in Section 63-46b-1.
 - (b) "Agency" means a board, commission, department, division, officer, council, office, committee, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.
 - (c) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.
 - (d) "Declaratory proceeding" means a proceeding authorized and governed by Section 63-46b-21.
 - (e) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.
 - (f) "Party" means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.
 - (g) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.
 - (h) (i) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding.
 - (ii) If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.
 - (iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.
 - (i) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.
 - (j) "Superior agency" means an agency required or authorized by law to review the orders of another agency.
- (2) This section does not prohibit an agency from designating by rule the names or titles of the agency head or the presiding officers with responsibility for adjudicative proceedings before the agency.

63-46b-3. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;

(ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(x) the name, title, mailing address, and telephone number of the presiding officer; and

(xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) When adjudicative proceedings are commenced by the agency, the agency shall:

(i) mail the notice of agency action to each party;

(ii) publish the notice of agency action, if required by statute; and

(iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.

(3) (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by his representative, and shall include:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date that the request for agency action was mailed;

(iv) a statement of the legal authority and jurisdiction under which agency action is requested;

(v) a statement of the relief or action sought from the agency; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(b) The person requesting agency action shall file the request with the agency and shall send a copy by mail to each person known to have a direct interest in the requested agency action.

(c) An agency may, by rule, prescribe one or more printed forms eliciting the information required by Subsection (3) (a) to serve as the request for agency action when completed and filed by the person requesting agency action.

(d) The presiding officer shall promptly review a request for agency action and shall:

(i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;

(ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or

(iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.

(e) (i) Any notice required by Subsection (3) (d) (ii) shall contain the information required by Subsection 63-46b-5 (1) (i) in addition to disclosure required by Subsection (3) (d) (ii) of this section.

(ii) The agency shall mail any notice required by Subsection (3) (d) to all parties, except that any notice required by Subsection (3) (d) (iii) may be published when publication is required by statute.

- (iii) The notice required by Subsection (3)
- (d) (iii) shall:
 - (A) give the agency's file number or other reference number;
 - (B) give the name of the proceeding;
 - (C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with citation to the applicable rule authorizing that designation, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11;
 - (D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;
 - (E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;
 - (F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and
 - (G) give the name, title, mailing address, and telephone number of the presiding officer.

(4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.

(6) Unless the agency provides otherwise by rule or order, applications for licenses filed under authority of Title 32A, Chapters 3, 4, and 5, are not considered to be a request for agency action under this chapter.

(7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

63-46b-4. Designation of adjudicative proceedings as informal -- Standards -- Undesignated proceedings formal.

(1) The agency may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if:

- (a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter;
- (b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures;
- (c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations; and
- (d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

(2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter.

(3) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

- (a) conversion of the proceeding is in the public interest; and
- (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

63-46b-5. Procedures for informal adjudicative proceedings.

(1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:

- (a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.
- (b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.
- (c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.
- (d) Hearings will be held only after timely notice to all parties.
- (e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

(h) All hearings shall be open to all parties.

(i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

- (i) the decision;
- (ii) the reasons for the decision;
- (iii) a notice of any right of administrative or judicial review available to the parties; and
- (iv) the time limits for filing an appeal or requesting a review.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) (a) The agency may record any hearing.

(b) Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

63-46b-6. Procedures for formal adjudicative proceedings -- Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63-46b-3 (5), the respondent, if any, shall file and serve a written response signed by the respondent or his representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63-46b-3 (3) (d), which shall include:

- (a) the agency's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief that the respondent seeks;
- (d) a statement of the facts; and
- (e) a statement summarizing the reasons that the relief requested should be granted.

(2) The response shall be filed with the agency and one copy shall be sent by mail to each party.

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All papers permitted or required to be filed shall be filed with the agency and one copy shall be sent by mail to each party.

63-46b-7. Procedures for formal adjudicative proceedings -- Discovery and subpoenas.

(1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.

(2) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

63-46b-8. Procedures for formal adjudicative proceedings -- Hearing procedure.

(1) Except as provided in Subsections 63-46b-3 (d)(i) and (ii), in all formal adjudicative proceedings, a hearing shall be conducted as follows:

(a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

(b) On his own motion or upon objection by a party, the presiding officer:

- (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
- (ii) shall exclude evidence privileged in the courts of Utah;
- (iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.

(c) The presiding officer may not exclude evidence solely because it is hearsay.

(d) The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(e) The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(g) The hearing shall be recorded at the agency's expense.

(h) Any party, at his own expense, may have a person approved by the agency prepare a transcript of

the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing.

(i) All hearings shall be open to all parties.

(2) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

63-46b-9. Procedures for formal adjudicative proceedings -- Intervention.

(1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(a) the agency's file number or other reference number;

(b) the name of the proceeding;

(c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

(d) a statement of the relief that the petitioner seeks from the agency.

(2) The presiding officer shall grant a petition for intervention if he determines that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(3) (a) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) The presiding officer may impose the conditions at any time after the intervention.

63-46b-10. Procedures for formal adjudicative proceedings -- Orders.

In formal adjudicative proceedings:

(1) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:

(a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;

(b) a statement of the presiding officer's conclusions of law;

(c) a statement of the reasons for the presiding officer's decision;

(d) a statement of any relief ordered by the agency;

(e) a notice of the right to apply for reconsideration;

(f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(g) the time limits applicable to any reconsideration or review.

(2) The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(3) No finding of fact that was contested may be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

(4) This section does not preclude the presiding officer from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

63-46b-11. Default.

(1) The presiding officer may enter an order of default against a party if:

(a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding;

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63-46b-6.

(2) An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

(3) (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default and any subsequent order shall be made to the presiding officer.

(c) A defaulted party may seek agency review under Section 63-46b-12, or reconsideration under Section 63-46b-13, only on the decision of the presiding officer on the motion to set aside the default.

(4) (a) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding begun by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall

determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

(b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

63-46b-12. Agency review -- Procedure.

(1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.

(b) The request shall:

(i) be signed by the party seeking review;

(ii) state the grounds for review and the relief requested;

(iii) state the date upon which it was mailed; and

(iv) be sent by mail to the presiding officer and to each party.

(2) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response. One copy of the response shall be sent by mail to each of the parties and to the presiding officer.

(3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules.

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other papers, or to conduct oral argument.

(5) Notice of hearings on review shall be mailed to all parties.

(6) (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute or rule permitting or requiring review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) the reasons for the disposition;

(vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or

modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and

(viii) the time limits applicable to any appeal or review.

63-46b-13. Agency review -- Reconsideration.

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

63-46b-14. Judicial review -- Exhaustion of administrative remedies.

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that:

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

(i) the administrative remedies are inadequate; or

(ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3) (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63-46b-13 (3) (b).

(b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter.

63-46b-15. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to removal or placement of children in state custody and actions relating to the support of those children as determined administratively under Section 78-3a-906.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action;
- (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
- (v) a copy of the written agency order from the informal proceeding;
- (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
- (vii) a request for relief, specifying the type and extent of relief requested; and
- (viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

63-46b-16. Judicial review -- Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

- (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
- (ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

63-46b-17. Judicial review -- Type of relief.

(1) (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute.

(b) In granting relief, the court may:

(i) order agency action required by law;

(ii) order the agency to exercise its discretion as required by law;

- (iii) set aside or modify agency action;
- (iv) enjoin or stay the effective date of agency action; or
- (v) remand the matter to the agency for further proceedings.

(2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute.

63-46b-18. Judicial review -- Stay and other temporary remedies pending final disposition.

(1) Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules.

(2) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

(3) If the agency denies a stay or denies other temporary remedies requested by a party, the agency's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

(4) If the agency has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

- (a) the agency violated its own rules in denying the stay; or
- (b) (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;
- (ii) the party seeking judicial review will suffer irreparable injury without immediate relief;
- (iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings; and
- (iv) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action under the circumstances.

63-46b-19. Civil enforcement.

(1) (a) In addition to other remedies provided by law, an agency may seek enforcement of an order by seeking civil enforcement in the district courts.

(b) The action seeking civil enforcement of an agency's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

(c) Venue for an action seeking civil enforcement of an agency's order shall be determined by the requirements of the Utah Rules of Civil Procedure.

(d) The action may request, and the court may grant, any of the following:

- (i) declaratory relief;
- (ii) temporary or permanent injunctive relief;

- (iii) any other civil remedy provided by law; or
- (iv) any combination of the foregoing.

(2) (a) Any person whose interests are directly impaired or threatened by the failure of an agency to enforce an agency's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced:

(i) until at least 30 days after the plaintiff has given notice of his intent to seek civil enforcement of the alleged violation to the agency head, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(ii) if the agency has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or

(iii) if a petition for judicial review of the same order has been filed and is pending in court.

(b) The complaint seeking civil enforcement of an agency's order must name, as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement.

(c) Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of an agency's order may not request, and the court may not grant, any monetary payment apart from taxable costs.

(3) In a proceeding for civil enforcement of an agency's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:

- (a) the order sought to be enforced was issued by an agency without jurisdiction to issue the order;
- (b) the order does not apply to the defendant;
- (c) the defendant has not violated the order; or
- (d) the defendant violated the order but has subsequently complied.

(4) Decisions on complaints seeking civil enforcement of an agency's order are reviewable in the same manner as other civil cases.

63-46b-20. Emergency adjudicative proceedings.

(1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:

(a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) the threat requires immediate action by the agency.

(2) In issuing its emergency order, the agency shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) issue promptly a written order, effective immediately, that includes a brief statement of

findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

(c) give immediate notice to the persons who are required to comply with the order.

(3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.

63-46b-21. Declaratory orders.

(1) Any person may file a request for agency action, requesting that the agency issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(2) Each agency shall issue rules that:

(a) provide for the form, contents, and filing of petitions for declaratory orders;

(b) provide for the disposition of the petitions;

(c) define the classes of circumstances in which the agency will not issue a declaratory order;

(d) are consistent with the public interest and with the general policy of this chapter; and

(e) facilitate and encourage agency issuance of reliable advice.

(3) (a) An agency may not issue a declaratory order if:

(i) the request is one of a class of circumstances that the agency has by rule defined as being exempt from declaratory orders; or

(ii) the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.

(b) An agency may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.

(4) Persons may intervene in declaratory proceedings if:

(a) they meet the requirements of Section 63-46b-9; and

(b) they file timely petitions for intervention according to agency rules.

(5) An agency may provide, by rule or order, that other provisions of Sections 63-46b-4 through 63-46b-13 apply to declaratory proceedings.

(6) (a) After receipt of a petition for a declaratory order, the agency may issue a written order:

(i) declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(ii) setting the matter for adjudicative proceedings;

(iii) agreeing to issue a declaratory order within a specified time; or

(iv) declining to issue a declaratory order and stating the reasons for its action.

(b) A declaratory order shall contain:

(i) the names of all parties to the proceeding on which it is based;

(ii) the particular facts on which it is based; and

(iii) the reasons for its conclusion.

(c) A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(d) A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(7) Unless the petitioner and the agency agree in writing to an extension, if an agency has not issued a declaratory order within 60 days after receipt of the petition for a declaratory order, the petition is denied.

63-46b-22. Transition procedures.

(1) The procedures for agency action, agency review, and judicial review contained in this chapter are applicable to all agency adjudicative proceedings commenced by or before an agency on or after January 1, 1988.

(2) Statutes and rules governing agency action, agency review, and judicial review that are in effect on December 31, 1987, govern all agency adjudicative proceedings commenced by or before an agency on or before December 31, 1987, even if those proceedings are still pending before an agency or a court on January 1, 1988.

III. APPENDIX C: ADMINISTRATIVE RULES ON RULEMAKING

Rules of the Division of Administrative Rules

Utah Administrative Code Title R15 (1998)

R15. Administrative Services, Administrative Rules.

R15-1. Administrative Rule Hearings.

R15-1-1. Authority.

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63-46a-10(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R15-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) In addition:

(a) "hearing" means an administrative rule hearing; and

(b) "officer" means an administrative rule hearing officer.

R15-1-3. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;

(b) opportunity for public comment on rules; and

(c) opportunity for agency response to public concerns about rules.

R15-1-4. When Agencies Hold Hearings.

(1) Agencies shall hold hearings as required by Subsection 63-46a-5(2).

(2) Agencies may hold hearings:

(a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;

(b) before initiating rulemaking procedures under Title 63, Chapter 46a, to promote public input prior to a rule's publication;

(c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or

(d) to hear any public petition for a rule change as provided by Section 63-46a-12.

(3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.

(4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any

additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63-46a-4(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

R15-1-5. Hearing Procedures.

(1) Notice.

(a) An agency shall provide notice of a hearing by:

(i) publishing the hearing date, time, place, and subject in the bulletin;

(ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63-46a-5 or 63-46a-12, respectively; and

(iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a rules hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) However, if a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for

information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.

(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.

(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.

(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for a decision to the director as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The director shall reply to the agency head as provided in Subsection R15-5-6(2). The director's decision shall be included in the hearing record.

R15-1-9. Appeal and Judicial Review.

(1) Persons may appeal the decision of the agency head or the division by petitioning the district court for judicial review as provided by law.

KEY: administrative law, government hearings
June 1, 1996 **63-46a-10**
Notice of Continuation November 1, 1995

R15. Administrative Services, Administrative Rules.

R15-2. Public Petitioning for Rulemaking.

R15-2-1. Authority.

As required by Subsection 63-46a-12(2), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

R15-2-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) In addition, "rule change" means:

- (a) making a new rule;
- (b) amending, repealing, or repealing and reenacting an existing rule;
- (c) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63-46a-6;
- (d) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
- (e) any combination of the above.

R15-2-3. Petition Procedure.

(1) The petition shall be addressed and delivered to the head of the agency authorized by law to make the rule change requested.

(2) The agency receiving the petition shall stamp the petition with the date of receipt.

R15-2-4. Petition Form.

The petition shall:

- (a) be clearly designated "petition for a rule change";
- (b) state the approximate wording of the requested rule change;
- (c) describe the reason for the rule change;
- (d) include an address and telephone where the petitioner can be reached during regular work days; and
- (e) be signed by the petitioner.

R15-2-5. Petition Consideration And Disposition.

- (1) The agency head or designee shall:
 - (a) review and consider the petition;
 - (b) write a response to the petition stating:
 - (i) that the petition is denied and reasons for denial, or
 - (ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and
 - (c) send the response to the petitioner within 30 days of receipt of the petition.
- (2) The petitioned agency may interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgement, deems necessary to provide the petition due consideration.
- (3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.
- (4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

KEY: administrative law
June 1, 1996 **63-46a-12**
Notice of Continuation November 1, 1995

R15. Administrative Services, Administrative Rules.

R15-3. Definitional Clarification of Administrative Rule.

R15-3-1. Authority, Purpose, and Definitions.

(1) This rule is authorized under Subsection 63-46a-10(1) which requires the division to administer the Utah

Administrative Rulemaking Act, Title 63, Chapter 46a.

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63-46a-2.

R15-3-2. Agency Discretion.

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63-46a-3(2).

(4) Within the limits prescribed by Sections 63-46a-3 and 63-46a-12.1, an agency has full discretion regarding the substantive content of its rules. The division has authority over nonsubstantive content under Subsections 63-46a-10(2) and (3), and 63-46a-10.5(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

R15-3-3. Use of Incorporation by Reference in Rules.

(1) An agency incorporating materials by reference as permitted under Subsection 63-46a-3(7) shall comply with the following standards:

(a) The rule shall state specifically that the cited material is "incorporated by reference."

(b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.

(c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

(d) In accordance with Subsection 63-46a-3(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.

(2) An agency shall comply with copyright requirements when it provides the division a copy of material incorporated by reference.

R15-3-4. Computer-Prohibited Material.

(1) All rules shall be in a format that permits their compatibility with the division's computer system and

compilation into the Utah Administrative Code.

(2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.

(3) The division shall issue and provide to agencies instructions and standards for formatting rules.

KEY: administrative law

June 1, 1996

63-46a-10

63-46a-3

R15. Administrative Services, Administrative Rules.

R15-4. Administrative Rulemaking Procedures.

R15-4-1. Authority and Purpose.

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63-46a-4, 63-46a-6, and 63-46a-7, as authorized under Subsection 63-46a-10(1).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2 EFFECTIVE THROUGH JUNE 30, 1998

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) In addition:

(a) "anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed, with the division, the most recent five year review required under Subsection 63-46a-9(3).

(b) "digest" means the Utah State Digest which summarizes the content of the bulletin as required by Subsection 63-46a-10(1)(f);

(c) "codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63-46a-4(2)(b);

(d) "unmarked change" means a change made to rule text that was not marked as required by Subsection 63-46a-4(2)(b).

R15-4-2 EFFECTIVE AFTER JUNE 30, 1998

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63-46a-9(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63-46a-10(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63-46a-4(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(g) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63-46a-4(2)(b).

R15-4-3 EFFECTIVE THROUGH JUNE 30, 1998

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63-46a-4(2) and 63-46a-6(1), an agency shall file its rule and rule analysis by 5 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 5 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 5 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 5 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-3 EFFECTIVE AFTER JUNE 30, 1998

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63-46a-4(2) and 63-46a-6(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-day Comment Period.

(1) For the purposes of Subsections 63-46a-4(6) and 63-46a-4(7), and in conformity with Utah Rules of Civil Procedures, Rule 6 (a), "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the comment period runs until 5 p.m. the next regular business day.

(2) A rule may be made effective on the day after the comment period expires.

R15-4-5. Notice of the Effective Date of a Rule.

(1) (a) Upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2) (a) The agency shall notify the division by filing with the division a form designated for that purpose indicating the effective date.

(b) If the form designated is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated shall be after the comment period specified on the rule analysis.

(4) The division shall publish the effective date in the next issue of the bulletin and digest. There is no publication deadline for a notice of effective date, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63-46a-3(4)(d) and 63-46a-6(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

- (a) proposed rules already published in the bulletin and digest but not made effective, or
- (b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

- (a) notify the division by filing with the division the form designated for nonsubstantive changes;
- (b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and
- (c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.

(1) Pursuant to Section 63-46a-6, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

- (a) The procedures of this section apply if:
 - (i) the agency determines a change in the rule is necessary;
 - (ii) the change is substantive under the criteria of Subsection 63-46a-2(18);
 - (iii) the rule was published as a proposal in the bulletin and digest; and
 - (iv) the rule has not been made effective under the procedures of Subsection 63-46a-6(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

- (a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and
- (b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-day Rules.

(1) Pursuant to Section 63-46a-7, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63-46a-7(1).

(a) The division interprets the criteria of Subsection 63-46a-7(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

- (a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;
- (b) no comment period is necessary;
- (c) no public hearing is necessary; and
- (d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

(1) (a) Pursuant to Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3) (a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

- (i) each page annotated "repealed in its entirety" or
- (ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

- (a) whether the unmarked change is substantive or nonsubstantive; and
- (b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63-46a-16 and that the agency must comply with regular rulemaking procedures to make the change.

R15-4-10 EFFECTIVE AFTER JUNE 30, 1998

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

(1) Pursuant to Subsections 63-46a-4(3), 63-46a-6(1), 63-46a-7(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

- (a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;
 - (b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);
 - (c) indicate that the amount is either a cost or a savings; and
 - (d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," or "other persons" as aggregated cost or savings;
- (2) In addition, an agency may:
- (a) provide a narrative description of anticipated cost or savings, and compliance cost;
 - (b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:
 - (i) current budgeted costs associated with the existing rule,
 - (ii) figures reported on a fiscal note attached to a related legislative bill, or
 - (iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from

the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "other persons," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

- (a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;
- (b) identify the reason or reasons why the Division refused to register and publish the rule or change; and
- (c) indicate the filing deadlines for the next issue of the Bulletin.

KEY: administrative law

June 1, 1996

63-46a-10

R15. Administrative Services, Administrative Rules.

R15-5. Administrative Rules Adjudicative Proceedings.

R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

- (a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and
- (b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63-46b-4 and 63-46a-5, and is enacted under the authority of Subsection 63-46a-10(1)(n) and Sections 63-46b-4, 63-46b-5, and 63-46b-21.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63-46b-2.

(2) In addition, "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63-46a-10(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

(1) The division shall not publish a proposed rule or rule change when the division determines the agency has not met the requirements of Title 63, Chapter 46a, or of Rules R15-3 or R15-4.

(2) The division shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63-46a-4(6)(a) as interpreted in Section R15-4-5.

(3) The division shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

(1) An agency may request a review of a division refusal to publish or register a rule or rule change by filing a written petition for review with the division director.

(2) The division director shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the division director by filing a written appeal to the Executive Director of the Department of Administrative Services within 20 days of receipt of the division director's decision. The Executive Director shall respond within 20 days affirming or reversing the division director's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63, Chapter 46a, by filing a written petition with the division.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the division within the two-year limit set by Section 63-46a-14.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the division should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The division shall respond to the petition in writing within 20 days of its receipt.

(a) The division shall research all records pertaining to the rule or rule change at issue.

(b) The response of the division shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The division shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the division's findings by filing a written request for reconsideration with the division director.

(a) The director may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

(1) A rule the division determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.

(2) The division shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the division determines is procedurally valid shall be published and registered promptly.

KEY: administrative procedure, administrative law**June 1, 1996****63-46a-10****Notice of Continuation 1993****63-46b-4****63-46b-5****63-46b-21****R15. Administrative Services, Administrative Rules.****R15-6. Rulemaking Decision and Administrative Record.****R15-6-1. Authority and Purpose.**

(1) In response to standards of judicial review of administrative rules identified in Section 63-46a-12.1, this rule requires agency consideration of public comment before rulemaking.

(2) The requirements of this rule are authorized under Section 63-46a-10, in conjunction with Subsection 63-46a-12.1(4)(a)(ii).

R15-6-2. Definitions.

Terms used in this rule are defined in Section 63-46a-2.

R15-6-3. Rulemaking Decision.

(1) The agency head or his designee shall consider the administrative record, including public comment, or a summary of the record prepared by agency staff, before initiating procedures to make, amend, or make effective the rule proposal.

(2) The agency head or his designee may confer with agency staff, including the hearing officer, and with interested parties at any time prior to reaching his decision to make, amend, or make effective a rule proposal.

(3) If the agency held a hearing on the proposed rule pursuant to a request under Section 63-46a-5, it shall notify

in writing all persons who petitioned for the hearing of the agency's decision regarding the rulemaking proposal.

KEY: administrative procedure

1990

63-46a-10

Notice of Continuation November 1, 1995

IV. APPENDIX D: RELATED EXECUTIVE ORDERS**A. Executive Order, February 3, 1986**

EXECUTIVE ORDER
[February 3, 1986]

WHEREAS, agencies of the state of Utah promulgate administrative rules to execute their respective statutory mandates and to protect the public health, safety and welfare; and

WHEREAS, many Agency rules are obsolete, unclear, or of unnecessary length and complexity thereby obstructing enforcement and compliance; and

WHEREAS, agency rules often repeat uniform codes, federal regulation and other material that maybe more conveniently adopted by reference; and

WHEREAS, some agencies lack necessary rules and thereby expose the state to costly litigation and loss; and

WHEREAS, the best interest of the state is to issue clear, concise rules to protect the public, promote economic development, and save taxpayers from undue loss; and

WHEREAS, the State is in the process of preparing a new administrative code containing all agency rules.

NOW THEREFORE, I, Norman H. Bangerter, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby promulgate the following Executive Order:

1. State agency directors shall review their administrative rules and repeal all rules and language unnecessary to interpret and carry out their statutory mandates, and delete all material not defined as a rule under Title 63, Chapter 46a, UCA 1953
2. State agency directors shall clarify and simplify all rules to facilitate enforcement and compliance
3. State agency directors shall reduce from the body of their rules all items that may be adopted by reference under Section 63-46a-3(5), UCA 1953.
4. State agency directors shall attempt to reduce the volume of their rules significantly (by 25% as a recommended, although not mandatory, target.)
5. State agency directors shall, however, ensure that all rules are enacted necessary to protect the state and taxpaying public from unwarranted litigation and loss.
6. State agency directors shall utilize the services of the Attorney General and Office of Administrative Rules as provided in Title 63, Chapter 46a, and shall assist in preparation of the new administrative code.
7. State agency directors shall complete this project no later than December 31, 1986, and shall report to the Governor's office on a quarterly basis on their progress in implementing this order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 3rd day of February, 1986.

Norman H. Bangerter
Governor

W. Val Oveson
Lt. Governor

B. Executive Order, March 22, 1988

EXECUTIVE ORDER

[March 22, 1988]

WHEREAS, throughout the Utah Code, agencies are directed to promulgate administrative rules to administer the statutes; and

WHEREAS, the best interest of the state is served by clear, concise rules to protect the public health, safety, and welfare; promote economic development; and to facilitate the orderly implementation of state statutes; and

WHEREAS, pursuant to 63-46a-9 UCA, agencies shall periodically review their rules and provide a statement citing the statutory provisions requiring such rules and a justification for continuation of such rules; and

WHEREAS, pursuant to my Executive Order of February 3, 1986, agencies have reviewed their administrative rules and have reduced the rules volume by 61%; which rules have now been published in the first Utah Administrative Code; and

WHEREAS, agencies' continual review of existing rules and a process of careful consideration and assessment for new rules will lead to further improvements and reductions in administrative rules;

NOW, THEREFORE, I, Norman H. Bangerter, Governor of the state of Utah, do hereby issue the following Executive Order outlining agency procedures for promulgating rules in compliance with and in addition to UCA 63-46a:

1. Before filing a proposed rule or amendment with the Division of Administrative Rules, state agency directors shall examine each proposed rule in light of the following:
 - a. What statute does the rule implement or interpret?
 - b. Is the rule or amendment required to implement the law and legislative intent?
 - c. What need will be met or problem will be solved by the rule?
 - d. What fiscal and non-fiscal impact does the rule have on the citizens, businesses, state government, and local political subdivisions?
 - e. Could the length of the rule be reduced through incorporation by reference?
 - f. Is the rule organized in logical, understandable fashion using concise, everyday language?
 - g. Does the rule meet all the criteria of 63-46a-2(13) and 63-46a-3?
 - h. Is the rule in the format prescribed in the Rulewriting Manual for Utah?
2. State agency directors shall establish a procedure for reviewing each proposed rule using the above checklist as minimum standards and shall file a copy of that procedure with the governor's office before June 1, 1988.
3. State agency directors shall cooperate with the Office of Planning and Budget in implementing executive review of administrative rules.
4. State agency directors shall work with the Division of Administrative Rules to automate the rulemaking process, thereby reducing process cost to the state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, done at the State Capitol in Salt Lake City, Utah, this 22nd day of March, 1988.

Norman H. Bangerter
Governor

W. Val Oveson
Lt. Governor

V. APPENDIX E: UTAH CASES CONCERNING ADMINISTRATIVE RULEMAKING**Utah Supreme Court Cases**

Elks Lodges 719 & 2021 v. Department of Alcoholic Beverage Control, 905 P.2d 1189, 1193, 1202 (Utah 1995).

Board of Equalization of Salt Lake County v. First Security Leasing Co., 881 P.2d 877, 879 (Utah 1994).

National Parks and Conservation Association v. Board of State Lands, 869 P.2d 909, 915 (Utah 1993).

Mountain Fuel Supply Co. v. Public Service Commission, 861 P.2d 414, 420 (Utah 1993).

Thorup Brothers Construction, Inc. v. Auditing Division of the State Tax Commission, 860 P.2d 324, 327 (Utah 1993).

Rocky Mountain Energy v. Tax Commission, 852 P.2d 284, 287 (Utah 1993).

Sanders Brine Shrimp v. Audit Division of the State Tax Commission, 846 P.2d 1304, 1306 (Utah 1993).

Salt Lake Citizens Congress v. Mountain States Telephone & Telegraph Co., 846 P.2d 1245, 1252-53 (Utah 1992).

Union Pac. Railroad Co. v. Division of Auditing, State Tax Commission, 842 P.2d 876, 879 (Utah 1992).

Morton International, Inc. v. Auditing Division of the Utah State Tax Commission, 814 P.2d 581, 586-89 (Utah 1991).

Savage Industries, Inc. v. State Tax Commission, 811 P.2d 664, 668 (Utah 1991).

Plateau Mining Co. v. Division of State Lands and Forestry, 802 P.2d 720, 731 (Utah 1990).

Chris & Dick's Lumber and Hardware v. Tax Commission, 791 P.2d 511, 513-14 (Utah 1990).

Hurley v. Board of Review of Industrial Commission, 767 P.2d 524, 526-27 (Utah 1988).

Williams v. Public Service Commission, 754 P.2d 41, 48-49 (Utah 1988).

Lane v. Board of Review of Industrial Commission of Utah, 727 P.2d 206, 208 (Utah 1986).

Williams v. Public Service Commission, 720 P.2d 773, 775-77 (Utah 1986).

Utah Restaurant Association v. Davis County Board of Health, 709 P.2d 1159, 1162 (Utah 1985).

Gray v. Department of Employment Security, 681 P.2d 807, 815-816 (Utah 1984).

Utah Department of Administrative Services v. Public Service Commission, 658 P.2d 601, 610-11 (Utah 1983).

West Jordan v. Department of Employment Security, 656 P.2d 411, 412 (Utah 1982).

Concerned Parents of Stepchildren v. Mitchell, 645 P.2d 629, 633, 635, 636 (Utah 1982).

Athay v. Department of Business Regulation, 626 P.2d 965, 968 (Utah 1981).

State of Utah, Department of Community Affairs v. Utah Merit System Council, 614 P.2d 1259, 1262-63 (Utah 1980).

State v. Gallion, 572 P.2d 683, 687 (Utah 1977).

McPhie v. Industrial Commission, 567 P.2d 153, 155 (Utah 1977).

Lockheed Aircraft Corp. v. State Tax Commission, 566 P.2d 1249, 1251 (Utah 1977).

IML Freight, Inc. v. Ottosen, 538 P.2d 296, 297 (Utah 1975). Overruled by *Neel v. State of Utah*, 889 P.2d 922, at 926, "insofar as it [(IML Freight)] is inconsistent with this opinion."

Robert H. Hinckley, Inc. v. State Tax Commission, 17 Utah 2d 70, 404 P.2d 662, 668 (1965).

McKnight v. State Land Board, 14 Utah 2d 238, 381 P.2d 726, 730 (Utah 1963).

Olson Construction Co. v. State Tax Commission, 12 Utah 2d 42, 361 P.2d 1112, 1113 (1961).

Utah Hotel Co. v. Industrial Commission, 107 Utah 24, 151 P.2d 467, 470-71 (1944).

Utah Court of Appeals Cases

V-1 Oil Co. v. Department of Environmental Quality, 904 P.2d 214, 218-19 (Utah Ct. App. 1995).
Newspaper Agency Corp. v. State Tax Commission, Auditing Division, 892 P.2d 17, 20 (Utah Ct. App. 1995).
Utah Bankers Association v. Utah Department of Financial Institutions, 888 P.2d 714, 717 (Utah Ct. App. 1994).
Trail Mountain Coal Co. v. Division of State Lands and Forestry, 884 P.2d 1265, 1273 (Utah Ct. App. 1994).
Mt. Olympus Waters, Inc. v. State Tax Commission, 877 P.2d 1271, 1273-1274 (Utah Ct. App. 1994).
Pickett v. Department of Commerce, Division of Occupational and Professional Licensing, 858 P.2d 187, 191 (Utah Ct. App. 1993).
Belnorth Petroleum Corporation v. State Tax Commission, 845 P.2d 266, 268-69, 271 (Utah Ct. App. 1993).
Horton v. Utah State Retirement Board, 842 P.2d 928, 931-932 (Utah Ct. App. 1992).
Ferro v. Department of Commerce, 828 P.2d 507, 510, 512 (Utah Ct. App. 1992).
Fussell v. Department of Commerce, Division of Occupational and Professional Licensing, 815 P.2d 250, 253-54 (Utah Ct. App. 1991).
Lorenc v. Call, 789 P.2d 46, 49 (Utah Ct. App. 1990).
Johnson v. Department of Employment Sec., 782 P.2d 965, 969 (Utah Ct. App. 1989).
Utah Restaurant Association v. Salt Lake City - County Board of Health, 771 P.2d 671, 674-675 (Utah Ct. App. 1989).
Crowther v. Nationwide Mutual Ins. Co., 762 P.2d 1119, 1122 (Utah Ct. App. 1988).
Ellis v. State Retirement Board, 757 P.2d 882, 887-888 (Utah Ct. App. 1988), affirmed at 783 P.2d 540 (Utah 1989).

Figure 4
Proposed Rule Process



Figure 5
Change in Proposed Rule Process

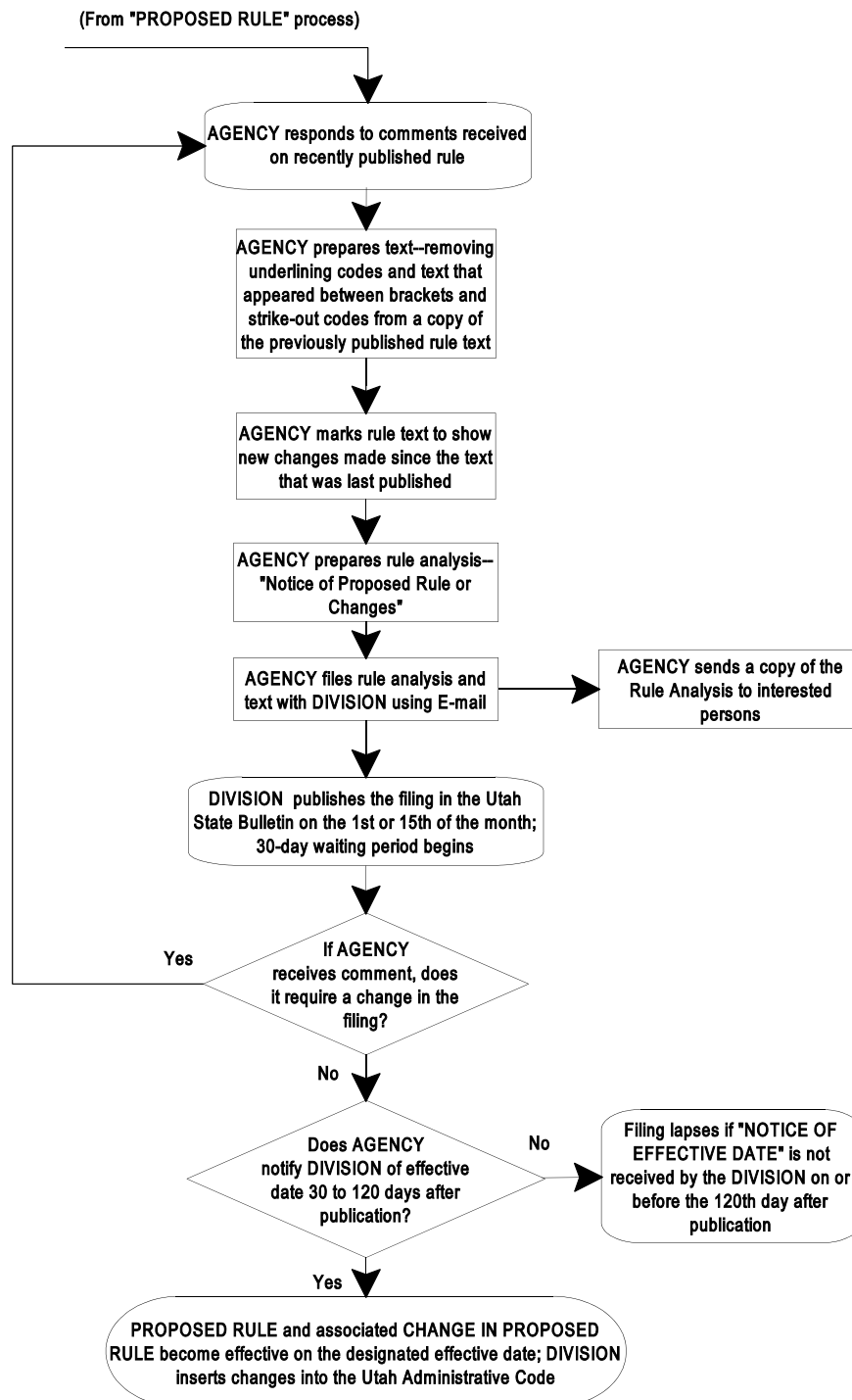


Figure 6
120-Day (Emergency) Rule Process

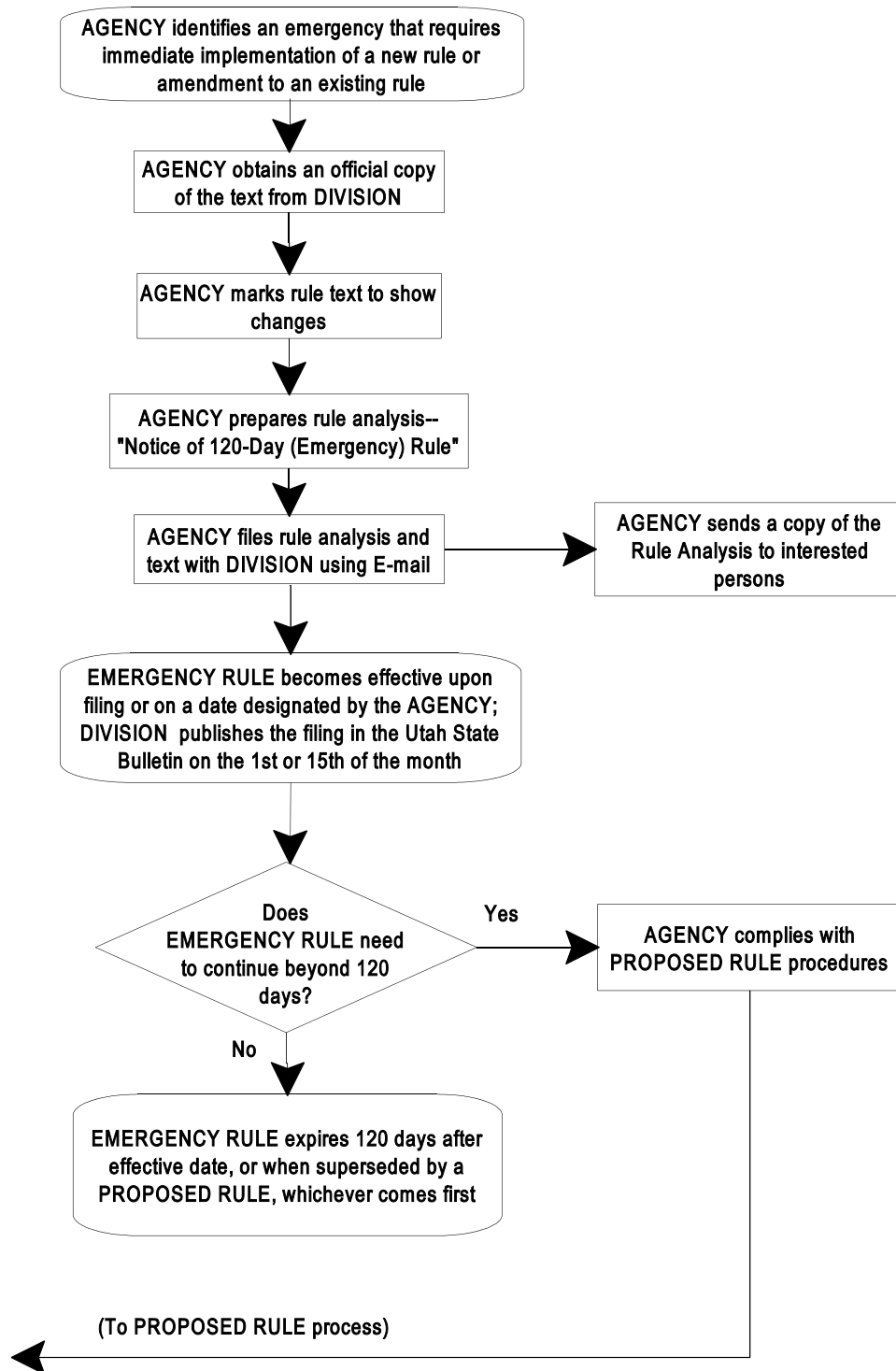


Figure 7
Nonsubstantive Change Process

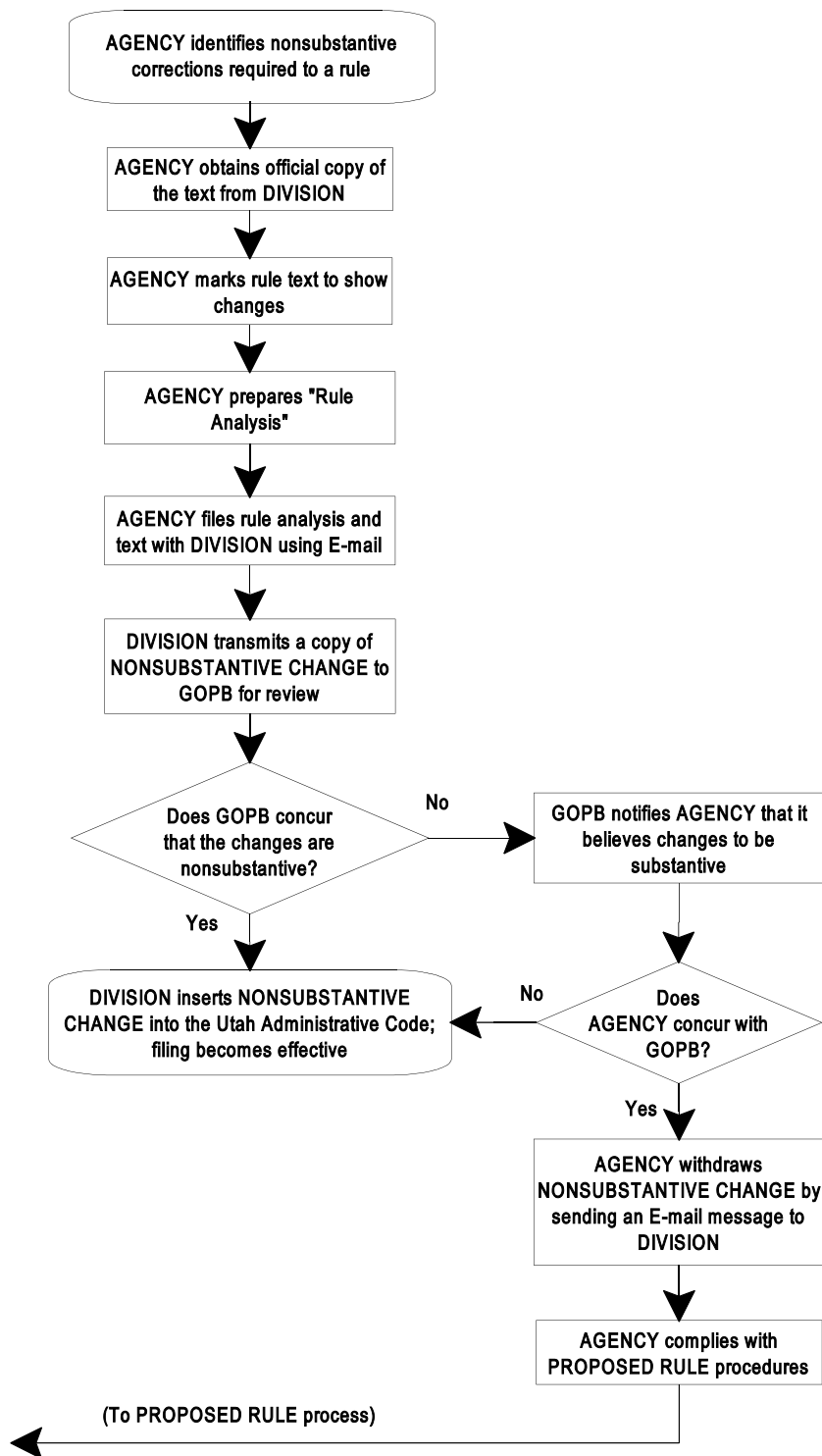
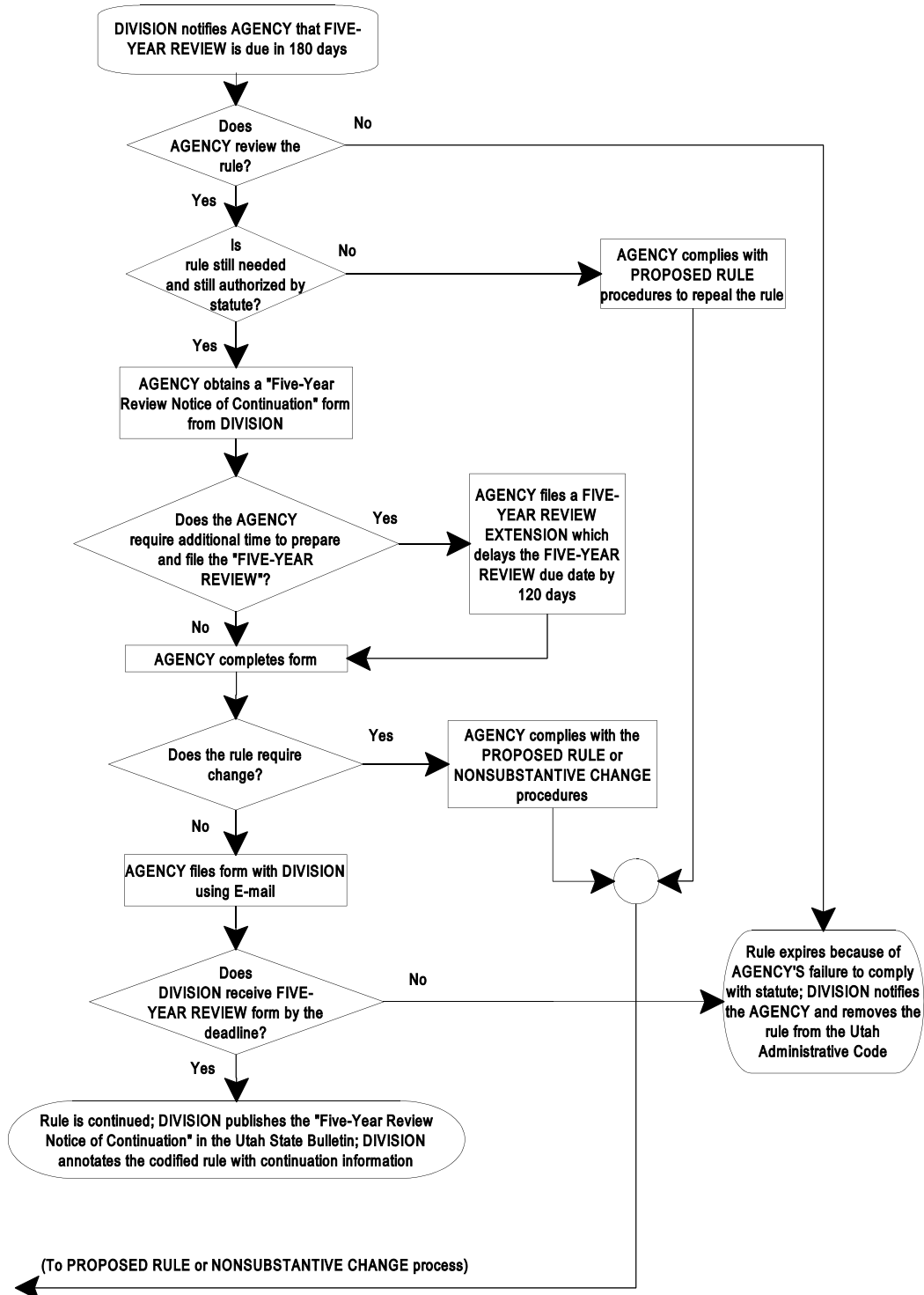


Figure 8
Five-Year Review and Extension Process



VII. APPENDIX G: RULEMAKING FORMS

Figure 9

“Notice of Proposed Rule or Change” facsimile

State of Utah Administrative Rule Analysis															
NOTICE OF PROPOSED RULE OR CHANGE															
<p>The agency identified below in box 1 provides notice of proposed rule or change pursuant to Utah Code Subsections 63-46a-4(2) and (4). Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the <i>Utah State Bulletin</i> unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.</p>															
<p>State of Utah Division of Administrative Rules (DAR) 4120 State Office Building; 450 North Main PO Box 141007 Salt Lake City, UT 84114-1007 Phone: (801) 538-3218, FAX: (801) 538-1773 State E-mail: <i>asdomain.asitmain.rules</i></p>	<p>DAR file no.:</p> <p>Utah Admin. Code ref. (R no.):</p> <p>Date filed:</p> <p>Time filed:</p> <p>Received by:</p>														
<p>1. Department:</p> <p>Agency:</p> <p>Room no., building:</p> <p>Street address:</p> <p>Mailing address:</p> <p>City, state ZIP:</p> <p>Contact person:</p> <p>Telephone:</p> <p>FAX:</p> <p>Internet E-mail:</p> <p style="text-align: center; font-size: small;">(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)</p>															
<p>2. Title of rule or section (catchline):</p>															
<p>3. Type of notice:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 20%;">Proposed rules</td> <td style="width: 5%; text-align: center;"><input type="checkbox"/></td> <td style="width: 20%;">New</td> <td style="width: 5%; text-align: center;"><input type="checkbox"/></td> <td style="width: 20%;">Amendment</td> <td style="width: 5%; text-align: center;"><input type="checkbox"/></td> <td style="width: 20%;">Repeal</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td colspan="5">Repeal and reenact</td> </tr> </table> <hr style="border-top: 1px dotted black;"/> <p>Other rule types <input type="checkbox"/> Change in proposed rule (changes original proposed rule file no.: <input style="width: 50px;" type="text"/>)</p>		Proposed rules	<input type="checkbox"/>	New	<input type="checkbox"/>	Amendment	<input type="checkbox"/>	Repeal		<input type="checkbox"/>	Repeal and reenact				
Proposed rules	<input type="checkbox"/>	New	<input type="checkbox"/>	Amendment	<input type="checkbox"/>	Repeal									
	<input type="checkbox"/>	Repeal and reenact													
<p>4. Purpose of the rule or reason for the change:</p>															
<p>5. This rule or change is a response to comments by the Administrative Rules Review Committee. <input type="checkbox"/> Yes <input type="checkbox"/> No</p>															
<p>6. Summary of the rule or change:</p>															

Figure 10

“Notice of Proposed Rule or Change” facsimile, page 2

NOTICE OF PROPOSED RULE OR CHANGE			
7. Aggregate anticipated cost or savings to: State budget: Local government: Other persons:			
8. Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
9. Comments by the department head on the fiscal impact the rule may have on businesses:			
10. This rule or change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required): <input style="width: 300px;" type="text"/> Federal citations (optional): <input style="width: 300px;" type="text"/>			
11. This rule or change adds or updates an incorporated reference (submit a copy to DAR): <input type="checkbox"/> Yes <input type="checkbox"/> No Reference title and date of issue or edition: <input style="width: 300px;" type="text"/>			
12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i> . See Section 63-46a-5 and Rule R15-1 for more information.) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): <input style="width: 100px;" type="text"/> A public hearing (optional) will be held on (mm/dd/yyyy): <input style="width: 100px;" type="text"/> at (time): <input style="width: 100px;" type="text"/> at (place): <input style="width: 300px;" type="text"/>			
13. This rule or change may become effective on (mm/dd/yyyy): <input style="width: 100px;" type="text"/>			
14. Indexing information - keywords (maximum of four, in lower case):			
15. Indexing information - affected industries (two-digit SIC codes):			
16. Attach a WordPerfect document containing the text of this rule or change (filename): <input style="width: 150px;" type="text"/>			
To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms may be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:	<input style="width: 95%;" type="text"/>	Date (mm/dd/yyyy):	<input style="width: 95%;" type="text"/>

Completing a Notice of Proposed Rule or Change

Utah Admin. Code Ref. The administrative code reference either for the rule (e.g., R15-4) or section (e.g., R15-4-3) which is the subject of the action.

Box 1: Agency information. Enter all applicable information.

Box 2: Title of rule or section (catchline). If making changes to the title, the old title is to be used. If the rule is the subject of the action, give the title of the rule; if a section is the subject, give the title of the section. Researchers will likely look for the rule or section under the old title.

Box 3: Type of Notice. Mark with an "X" the type of action: new, amendment, repeal, repeal and reenact, or change in proposed rule:

New = a new rule, not currently in the code and *not* a new section added to an existing rule;

Amendment = any substantive changes to existing rules, including adding new, or deleting old, sections;

Repeal = the deletion of an entire rule (deleting a section is an amendment);

Repeal and reenact = used only if the marked changes are numerous and difficult to follow;

Change in proposed rule = changes proposed to a previously published rule which has not yet been made effective (be sure to enter the DAR number of the previous rule or change);

Box 4: Purpose of the rule or reason for the change. Why is this change being proposed? —a Division review, the Legislature changed the governing statute, agency or public requests, five-year review follow-up. Use complete sentences.

Box 5: This rule or change is a response to comments by the Administrative Rules Review Committee. Mark yes or no.

Box 6: Summary of the rule or change. Describe the rule or change in enough detail so anyone reading the summary could know the essence of what has changed without seeing the text. Use complete sentences. If the proposed rule is being filed as a "repeal and reenactment," the summary must also include a summary of substantive provisions in the repealed rule which are eliminated from the reenacted rule, and a summary of new substantive provisions appearing only in the reenacted rule.

Box 7: Aggregate anticipated cost or savings to. Must fill in all three—state budget, local government, and other persons. If the answer is "none" or "unknown" a description of the process used to determine "none" or a narrative description of impacts is required. Report figures in dollars and in the aggregate. Please give careful consideration to these questions. If something is listed, indicate whether or not it is a cost or savings. *This information must be entered.* This information is always applicable—do not enter "N/A."

Box 8: Compliance cost for affected persons. Indicate the potential cost to a person (corporation, individual, public or private organization) in order to comply with the provisions of the rule. If the answer is "none" or "unknown" a description of the process used to ascertain "none" or a narrative description of impacts is required. *This information must be entered.* This information is always applicable—do not enter "N/A."

Box 9: Comments by the department head on the fiscal impact the rule may have on businesses. Type the comments of the department head (executive director, commissioner—not a designee) in this box. Use complete sentences.

Box 10: This rule or change is authorized or mandated by state law, and implements or interprets the following state and federal laws. One entry should be the state code or constitutional citation authorizing the agency to regulate. Other entries may be state statutory, state constitutional, federal statutory or regulatory (the "Federal Mandate"), or case law citations which require, or are implemented or interpreted by, the rule.

Box 11: This rule or change adds or updates an incorporated reference. Enter an "X" in "YES" if the rule or change adds a new incorporation or updates a current incorporation. The title and date of issue or edition of the material *must* be entered in the "Reference" box. A copy of the material being incorporated *should* be filed with the Division when the rule is filed (no later than a day or two after filing the rule; no faxes or E-mail).

Box 12: The public may submit written or oral comments to the agency identified in box 1. Comment must be accepted for 30 days after the publication date, but the comment period must end on a working day (if the 30th day is on a weekend, comment will go to the following Monday). If the agency will be holding a public hearing or hearings, that information is entered in the "Public Hearing" information boxes.

Box 13: This rule or change may become effective on. The first possible effective date is the day after the close of public comment. The rule can be made effective any time after the end of the comment period but not more than 120 days after the date of publication.

Box 14: Indexing information - keywords. Terms that describe the rule, four maximum. Must match the ones currently in the code and be in lowercase letters; keywords may be changed, but must be properly marked with either underlining, or brackets and strike-out. Enter the new keywords on the form.

Box 15: Indexing information - affected industries (two-digit SIC codes). Enter SIC codes describing the types of industries affected by the rule or change. The full list of two-digit SIC codes may be obtained from the Division of Administrative Rules.

Box 16: Attach a WordPerfect document containing the text of this rule or change (filename). Type in the name of the WordPerfect file containing the text associated with the proposed rule or change.

Agency authorization. Enter the name, and title, of the person authorizing the proposed rule or change, and the date of the authorization. If a signature is necessary, print the form, sign it, and mail it to us.

Finally, SPELL CHECK AND PROOFREAD THE FORM!

NOTE: The Publications Editor will return a copy of the form with the DAR Number on it and the text that was used in publication. This text contains any corrections in format made for publication and is the same text used by the Code Editor to update the Administrative Code database (except for any unmarked changes).

Figure 11

“Notice of Effective Date” facsimile

State of Utah							
NOTICE OF EFFECTIVE DATE							
Submission of this form, by the agency identified below in box 1, establishes the effective date of the indicated rule filing (pursuant to Utah Code Section 63-46a-4).							
State of Utah Division of Administrative Rules (DAR) 4120 State Office Building; 450 North Main PO Box 141007 Salt Lake City, UT 84114-1007 Phone: (801) 538-3218, FAX: (801) 538-1773 State E-mail: asdomain.asitmain.rules	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">DAR file no.:</td></tr> <tr><td style="padding: 2px;">Utah Admin. Code ref. (R no.):</td></tr> <tr><td style="padding: 2px;">Date filed:</td></tr> <tr><td style="padding: 2px;">Time filed:</td></tr> <tr><td style="padding: 2px;">Received by:</td></tr> </table>	DAR file no.:	Utah Admin. Code ref. (R no.):	Date filed:	Time filed:	Received by:	
DAR file no.:							
Utah Admin. Code ref. (R no.):							
Date filed:							
Time filed:							
Received by:							
1. Department: Agency: Room no., building: Street address: Mailing address: City, state ZIP: Contact person: Telephone: FAX: Internet E-mail:							
2. Title of rule or section (catchline):							
3. The rule or change made effective by this notice was submitted as a: <table style="width: 100%; margin-top: 10px;"> <tr> <td><input type="checkbox"/> New rule</td> <td><input type="checkbox"/> Amendment</td> <td><input type="checkbox"/> Repeal</td> </tr> <tr> <td><input type="checkbox"/> Repeal and reenact</td> <td><input type="checkbox"/> Change in proposed rule</td> <td>(DAR file no.: <input style="width: 50px;" type="text"/>)</td> </tr> </table>		<input type="checkbox"/> New rule	<input type="checkbox"/> Amendment	<input type="checkbox"/> Repeal	<input type="checkbox"/> Repeal and reenact	<input type="checkbox"/> Change in proposed rule	(DAR file no.: <input style="width: 50px;" type="text"/>)
<input type="checkbox"/> New rule	<input type="checkbox"/> Amendment	<input type="checkbox"/> Repeal					
<input type="checkbox"/> Repeal and reenact	<input type="checkbox"/> Change in proposed rule	(DAR file no.: <input style="width: 50px;" type="text"/>)					
4. Indexing information - keywords (maximum of four, in lower case):							
5. Indexing information - affected industries (two-digit SIC codes):							
6. Effective date (after close of comment period, but not more than 120 days after publication in the <i>Utah State Bulletin</i>): The rule or change described on this form is effective and enforceable on (mm/dd/yyyy): <input style="width: 100px;" type="text"/>							
To the agency: This form must be received by the Division of Administrative Rules on or before the date indicated in box 6 (pursuant to Utah Code Section 63-46a-4). Please do not submit rule text with this form.							
AGENCY AUTHORIZATION							
Agency head or designee, and title:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; height: 30px;"></td> <td style="width: 40%; padding: 5px; vertical-align: top;"> Date (mm/dd/yyyy): </td> </tr> </table>		Date (mm/dd/yyyy):				
	Date (mm/dd/yyyy):						
<table style="width: 100%;"> <tr> <td style="width: 40%; background-color: #e0e0e0; padding: 5px;">For DAR use only</td> <td style="padding: 5px;">Rule publication information: <div style="border: 1px solid black; width: 150px; height: 20px; display: inline-block;"></div></td> </tr> </table>		For DAR use only	Rule publication information: <div style="border: 1px solid black; width: 150px; height: 20px; display: inline-block;"></div>				
For DAR use only	Rule publication information: <div style="border: 1px solid black; width: 150px; height: 20px; display: inline-block;"></div>						

Figure 12

“Notice of 120-Day (Emergency) Rule” facsimile, page 1

State of Utah
Administrative Rule Analysis

NOTICE OF 120-DAY (EMERGENCY) RULE

The agency identified below in box 1 provides notice of a 120-day (emergency) rule pursuant to Utah Code Section 63-46a-7. Please address questions regarding information on this notice to the agency.

State of Utah Division of Administrative Rules (DAR) 4120 State Office Building; 450 North Main PO Box 141007 Salt Lake City, UT 84114-1007 Phone: (801) 538-3218, FAX: (801) 538-1773 State E-mail: <i>asdomain.asitmain.rules</i>	DAR file no.: <hr/> Utah Admin. Code ref. (R no.): <hr/> Date filed: <hr/> Time filed: <hr/> Received by: <hr/>
1. Department: Agency: Room no., building: Street address: Mailing address: City, state ZIP: Contact person: Telephone: FAX: Internet E-mail: <p style="text-align: center; font-size: small;">(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)</p>	
2. Title of rule or section (catchline): 	
3. Effective date (mm/dd/yyyy): 	
4. Purpose of the rule or reason for the change: 	
5. Summary of the rule or change: 	
6. Regular rulemaking would: <div style="margin-left: 20px;"> <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or <input type="checkbox"/> place the agency in violation of federal or state law. </div> Specific reason and justification: 	

Figure 13

“Notice of 120-Day (Emergency) Rule” facsimile, page 2

NOTICE OF 120-DAY (EMERGENCY) RULE			
7. Aggregate anticipated cost or savings to: <div style="margin-left: 20px;">State budget:</div> <div style="margin-left: 20px;">Local government:</div> <div style="margin-left: 20px;">Other persons:</div>			
8. Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
9. Comments by the department head on the fiscal impact the rule may have on businesses:			
10. This rule or change is authorized or mandated by state law, and implements or interprets the following state and federal laws. <div style="display: flex; justify-content: space-between;"> <div style="width: 40%;"> <div style="margin-bottom: 5px;">State code or constitution citations (required):</div> <div style="margin-bottom: 5px;">Federal citations (optional):</div> </div> <div style="width: 60%; border: 1px solid black; min-height: 40px;"></div> </div>			
11. This rule or change adds or updates an incorporated reference (submit a copy to DAR):			<input type="checkbox"/> Yes <input type="checkbox"/> No
Reference title and date of issue or edition: <div style="border: 1px solid black; width: 300px; height: 1.2em; display: inline-block;"></div>			
12. Indexing information - keywords (maximum of four, in lower case):			
13. Indexing information - affected industries (two-digit SIC codes):			
14. Attach a WordPerfect document containing the text of this rule or change (filename):			
To the agency: Information requested on this form is required by Sections 63-46a-4, 7, and 10. Incomplete forms may be returned to the agency for completion, possibly delaying the effective date and publication in the <i>Utah State Bulletin</i> .			
AGENCY AUTHORIZATION			
Agency head or designee, and title:		Date (mm/dd/yyyy):	

Figure 14

“Five-Year Notice of Review and Statement of Continuation” facsimile

State of Utah			
FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
State of Utah Division of Administrative Rules (DAR) 4120 State Office Building; 450 North Main PO Box 141007 Salt Lake City, UT 84114-1007 Phone: (801) 538-3218, FAX: (801) 538-1773 State E-mail: asdomain.asitmain.rules		DAR file no.:	
		Utah Admin. Code ref. (R no.):	
		Date filed:	
		Time filed:	
		Received by:	
1. Department: Agency: Room no., building: Street address: Mailing address: City, state ZIP: Contact person: Telephone: FAX: Internet E-mail:			
2. Title of rule (catchline):			
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:			
4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:			
5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:			
6. Indexing information - keywords (maximum of four, in lower case):			
7. Indexing information - affected Industries (two-digit SIC codes):			
8. Attach a WordPerfect document containing the rule's full text (filename):			
To the agency: Information requested on this form is required by Section 63-46a-9. Incomplete forms may be returned to the agency for completion, possibly delaying the effective date.			
AGENCY AUTHORIZATION			
This rule has been reviewed by the agency, and notice is given that it is continued under provisions of Section 63-46a-9.			
Agency head or designee, and title:		Date (mm/dd/yyyy):	
For DAR use only		Effective date (mm/dd/yyyy):	

Figure 15

“Notice of Nonsubstantive Rule Change” facsimile, page 1

State of Utah NOTICE OF NONSUBSTANTIVE RULE CHANGE			
State of Utah Division of Administrative Rules (DAR) 4120 State Office Building; 450 North Main PO Box 141007 Salt Lake City, UT 84114-1007 Phone: (801) 538-3218, FAX: (801) 538-1773 State E-mail: <i>asdomain.asitmain.rules</i>		DAR file no.:	
		Utah Admin. Code ref. (R no.):	
		Date filed:	
		Time filed:	
		Received by:	
1. Department: Agency: Room no., building: Street address: Mailing address: City, state ZIP: Contact person: Telephone: FAX: Internet E-mail:			
2. Title of rule or section (catchline):			
3. Purpose of or reason for the nonsubstantive change:			
4. This change is a response to comments by the Administrative Rules Review Committee. <input type="checkbox"/> Yes <input type="checkbox"/> No			
5. Summary of the nonsubstantive change:			
6. This change includes a nonsubstantive update to an incorporated reference (submit a copy to DAR): <input type="checkbox"/> Yes <input type="checkbox"/> No Reference title and date of issue or edition:			
7. Indexing information - keywords (maximum of four, in lower case):			
8. Indexing information - affected industries (two-digit SIC codes):			
9. Attach a WordPerfect document containing the text of this nonsubstantive change (filename):			
To the agency: A nonsubstantive change becomes effective on the date the Division of Administrative Rules makes the change to the rule in the <i>Utah Administrative Code</i> (see Subsection R15-4-6(5)).			
AGENCY AUTHORIZATION			
Agency head or designee, and title:		Date (mm/dd/yyyy):	

Figure 16

“Notice of Nonsubstantive Change” facsimile, page 2

State of Utah

NOTICE OF NONSUBSTANTIVE RULE CHANGE**FOR DIVISION OF ADMINISTRATIVE RULES USE ONLY**

Pages

Date sent to GOPB (mm/dd/yyyy):

Record as a nonsubstantive change*

Date given to the Code Editor (mm/dd/yyyy):

*formatting or renumbering changes only

FOR GOVERNOR'S OFFICE OF PLANNING AND BUDGET USE ONLY**Filing information:**

Date returned to DAR (mm/dd/yyyy):

Reviewed by:

Action taken:
☐
☐
☐

Record as a nonsubstantive change

Withdrawn by agency (the agency has agreed to send a withdrawal memo to the division)

Change as indicated in comments (agency has agreed to send a memo of concurrence to the division)

Comments:**FOR DIVISION OF ADMINISTRATIVE RULES USE ONLY**

Received by:

Date received

(mm/dd/yyyy):

Change made to UAC database by:

Rule effective date

(mm/dd/yyyy):

VIII. APPENDIX H: SAMPLE RULE IN FORMAT

Rules submitted to the Division of Administrative Rules must adhere to a strict format (see "Text Formatting Standards" on page 84). [Figure 17](#) shows a correctly formatted rule as it appears in print. [Figure 18](#) shows the same rule as it appears in the WordPerfect Reveal Codes window. [Figure 18](#) shows the correct placement of boldface codes, center codes, tabs, hard returns, etc. Placement of these codes must be precise to ensure that data is not lost. [Figure 19](#) and [Figure 20](#) illustrate a rule in correct format, marked with amendments as it appears in print and the Reveal Codes window.

Figure 17

Printed Rule "In Format"

R63. Agriculture, Chemical Laboratories.

R63-1. Fees Schedule.

R63-1-1. Authority and Purpose.

- (1) This rule is authorized under Section 4-2-10.
- (2) This rule sets standard fees for tests performed by the state chemist as provided by Section 4-2-10.

R63-1-2. Definitions.

- (1) Terms used in this rule are defined in Section 4-2-9.
- (2) In addition, "analytical" means investigation to determine component parts.

R63-1-3. Analytical Service Fees.

- (1) Effective August 1, 1984, the Department of Agriculture Laboratory charges \$30 per hour for analytical services.
- (2) The services listed in the following table have certain fees.

TABLE

Feed and Meat:	One Sample Only	Two/Five Samples	Six or more Samples
Moisture	\$15.00	\$10.00	\$ 5.00
Fat	30.00	25.00	20.00
Fiber	45.00	40.00	35.00
Protein	25.00	20.00	15.00
NPN	20.00	15.00	10.00
Ash	15.00	10.00	5.00

- (3) The cost of analytical tests other than those listed in Subsection (2) will be charged at the rate of \$30 per hour.

KEY: chemical testing
1987

4-2-2

Figure 18

WordPerfect 5.1/5.2 Document in "Reveal Code" Format

[BOLD]R63. Agriculture, Chemical Laboratories. **[bold]** **[HRT]**
[BOLD]R63[-]1. Fees Schedule. **[bold]** **[HRT]**
[BOLD]R63[-]1[-]1. Authority and Purpose. **[bold]** **[HRT]**
[TAB](1) This rule is authorized under Section 4[-]2[-]10. **[HRT]**
[Tab](2) This rule sets standard fees for tests performed by the **[SRT]**
state chemist as provided by Section 4[-]2[-]10. **[HRT]**
[HRT]
[BOLD]R63[-]1[-]2. Definitions. **[bold]** **[HRT]**
[Tab](1) Terms used in this rule are defined in Section 4[-]2[-]9. **[HRT]**
[TAB](2) In addition, "analytical" means investigation to **[SRT]**
determine component parts. **[HRT]**
[HRT]
[BOLD]R63[-]1[-]3. Analytical Service Fees. **[bold]** **[HRT]**
[TAB](1) Effective August 1, 1984, the Department of Agriculture **[SRT]**
Laboratory charges \$30 per hour for analytical services. **[HRT]**
[Tab](2) The services listed in the following table have certain **[SRT]**
fees. **[HRT]**
[HRT]
[Center]TABLE **[HRT]**
[HRT]

Feed and Meat:	One Sample	Two/Five	Six or
	Only	Samples	more Samples
Moisture	\$15.00	\$10.00	\$ 5.00
Fat	30.00	25.00	20.00
Fiber	45.00	40.00	35.00
Protein	25.00	20.00	15.00
NPN	20.00	15.00	10.00
Ash	15.00	10.00	5.00

[Center] **[HRT]**
[TAB](3) The cost of analytical tests other than those listed in **[SRT]**
Subsection (2) will be charged at the rate of \$30 per hour. **[HRT]**
[HRT]
[BOLD]KEY: chemical testing **[bold]** **[HRT]**
[BOLD]1987 **[Flsh Rgt]**4[-]2[-]2 **[HRT]**
[Flsh Rgt]4[-]2[-]10 **[bold]** **[HRT]**
[HRT]
[HRT]

Figure 19

Amended Rule in Format

R205. Community and Economic Development, Community Development, Expositions.**R205-2. Utah State Fair Commercial Exhibitor Rules.****R205-2-1. Applications.**

Potential exhibitors desiring a commercial, non-profit, or educational booth at the Utah State Fair shall complete and submit a commercial space application furnished by the fair.

R205-2-2. Selection of Exhibitors.

(a) The fair director and Board of Expositions reserve the right to contract for exhibit space regardless of an exhibitor's length of time at the fair, product, or other sufficient reasons determined by the director. Renewals to participate in the next year's fair are sent in ~~[January]~~February by invitation only. The renewal is based upon the previous years's exhibitor's fulfillment of the exhibit space lease agreement, payment of ~~[rental fees]~~rent on due ~~[dates]~~date, conduct of exhibitor and his hired help, and the quality of product. Following this process, new applications are reviewed and vacant spaces filled.

(b) Applications are accepted on the basis of educational value, variety, quality of product, and credentials and are not necessarily accepted by the posted date received by the fair. All commercial exhibits are subject to approval of the Board of Expositions.

R205-2-3. Exhibit Space Lease Agreement.

Each exhibit space requires an Exhibit Space Lease Agreement signed by both the renter and space supervisor. The signing of the agreement with the Division of Expositions indicates the renter's acceptance of the rules governing the contract which includes the ~~[rental fee]~~deposit and rent balance to be paid on the date designated ~~[on]~~in the contract. Failure to honor this rule is grounds for cancellation of exhibit space without refund of deposit. The Exhibit Space Lease Agreement form and ~~[rental fee]~~rent are revised from year to year and are adopted by reference as part of this rule.

R205-2-4. Advertising Material Prohibited without Lease Agreement.

No individual or company shall distribute advertising material ~~[on]~~in the fairpark without a certified exhibit space lease agreement.

KEY: fairs, rules and procedures

~~[1991]~~1994

64-4-5

Figure 20

Amended Rule in "Reveal Code" Format

[BOLD]R205. Community and Economic Development, Community Development, Expositions. [bold] [Hrt]
 [BOLD]R205[-]2. Utah State Fair Commercial Exhibitor Rules. [bold] [Hrt]
 [BOLD]R205[-]2[-]1. Applications. [bold] [Hrt]
 [Tab]Potential exhibitors desiring a commercial, non[-]profit, or educational booth at [SRt]
 the Utah State Fair shall complete and submit a commercial space application [SRt]
 furnished by the fair. [Hrt]
 [Hrt]

• • • • •

[BOLD]R205[-]2[-]3. Exhibit Space Lease Agreement. [bold] [Hrt]
 [Tab]Each exhibit space requires an Exhibit Space Lease Agreement signed by both the [SRt]
 renter and space supervisor. The signing of the agreement with the Division of [SRt]
 Expositions indicates the renter's acceptance of the rules governing the contract [SRt]
 which includes the [[STKOUT]rental fee [stkout]]deposit and [UND]rent [und]balance to
 be paid on [UND]the [und]date [SRt]
 designated [[STKOUT]on [stkout]] [UND]in the [und] contract. Failure to honor this rule
 is grounds for [SRt]
 cancellation of exhibit space without refund of deposit. The Exhibit Space Lease [SRt]
 Agreement form and [[STKOUT]rental fee [stkout]] [UND]rent [und] are revised from year to
 year and are adopted [SRt]
 by reference as part of this rule. [Hrt]
 [Hrt]

[BOLD]R205[-]2[-]4. Advertising Material Prohibited without Lease Agreement. [bold] [Hrt]
 [Tab]No individual or company shall distribute advertising material
 [[STKOUT]on [stkout]] [UND]in [und] the [SRt]
 fairpark without a certified exhibit space lease agreement. [Hrt]
 [Hrt]

[BOLD]KEY: fairs, rules and procedures [bold] [Hrt]
 [BOLD] [[STKOUT]1991 [stkout]] [UND]1994 [und] [Flsh Rgt]64[-]4[-]5 [bold] [Hrt]
 [Hrt]
 [Hrt]

IX. APPENDIX I: RULEMAKING TIME FRAMES

Filing Window Opens*	Filing Deadline*	Bulletin Publication Date	End of Mandatory (30 Day)** Comment Period	First Possible Effective Date***	Last Possible Effective Date****
12/1/97, Mon, 5:01 PM	12/15/97, Mon, 5:00 PM	1/1/98, Thu	2/2/98, Mon	2/3/98, Tue	5/1/98, Fri
12/15/97, Mon, 5:01 PM	1/2/98, Fri, 5:00 PM	1/15/98, Thu	2/17/98, Tue	2/18/98, Wed	5/15/98, Fri
1/2/98, Fri, 5:01 PM	1/15/98, Thu, 5:00 PM	2/1/98, Sun	3/3/98, Tue	3/4/98, Wed	6/1/98, Mon
1/15/98, Thu, 5:01 PM	2/2/98, Mon, 5:00 PM	2/15/98, Sun	3/17/98, Tue	3/18/98, Wed	6/15/98, Mon
2/2/98, Mon, 5:01 PM	2/17/98, Tue, 5:00 PM	3/1/98, Sun	3/31/98, Tue	4/1/98, Wed	6/29/98, Mon
2/17/98, Tue, 5:01 PM	3/2/98, Mon, 5:00 PM	3/15/98, Sun	4/14/98, Tue	4/15/98, Wed	7/13/98, Mon
3/2/98, Mon, 5:01 PM	3/16/98, Mon, 5:00 PM	4/1/98, Wed	5/1/98, Fri	5/2/98, Sat	7/30/98, Thu
3/16/98, Mon, 5:01 PM	4/1/98, Wed, 5:00 PM	4/15/98, Wed	5/15/98, Fri	5/16/98, Sat	8/13/98, Thu
4/1/98, Wed, 5:01 PM	4/15/98, Wed, 5:00 PM	5/1/98, Fri	6/1/98, Mon	6/2/98, Tue	8/29/98, Sat
4/15/98, Wed, 5:01 PM	5/1/98, Fri, 5:00 PM	5/15/98, Fri	6/15/98, Mon	6/16/98, Tue	9/12/98, Sat
5/1/98, Fri, 5:01 PM	5/15/98, Fri, 5:00 PM	6/1/98, Mon	7/1/98, Wed	7/2/98, Thu	9/29/98, Tue
5/15/98, Fri, 5:01 PM	6/1/98, Mon, 5:00 PM	6/15/98, Mon	7/15/98, Wed	7/16/98, Thu	10/13/98, Tue
6/1/98, Mon, 5:01 PM	6/15/98, Mon, 5:00 PM	7/1/98, Wed	7/31/98, Fri	8/1/98, Sat	10/29/98, Thu
6/15/98, Mon, 5:01 PM	7/1/98, Wed, 11:59 PM	7/15/98, Wed	8/14/98, Fri	8/15/98, Sat	11/12/98, Thu
7/1/98, Wed, 12:00 AM	7/15/98, Wed, 11:59 PM	8/1/98, Sat	8/31/98, Mon	9/1/98, Tue	11/29/98, Sun
7/15/98, Wed, 12:00 AM	7/31/98, Fri, 11:59 PM	8/15/98, Sat	9/14/98, Mon	9/15/98, Tue	12/13/98, Sun
7/31/98, Fri, 12:00 AM	8/14/98, Fri, 11:59 PM	9/1/98, Tue	10/1/98, Thu	10/2/98, Fri	12/30/98, Wed
8/14/98, Fri, 12:00 AM	9/1/98, Tue, 11:59 PM	9/15/98, Tue	10/15/98, Thu	10/16/98, Fri	1/13/99, Wed
9/1/98, Tue, 12:00 AM	9/15/98, Tue, 11:59 PM	10/1/98, Thu	11/2/98, Mon	11/3/98, Tue	1/29/99, Fri
9/15/98, Tue, 12:00 AM	10/1/98, Thu, 11:59 PM	10/15/98, Thu	11/16/98, Mon	11/17/98, Tue	2/12/99, Fri
10/1/98, Thu, 12:00 AM	10/15/98, Thu, 11:59 PM	11/1/98, Sun	12/1/98, Tue	12/2/98, Wed	3/1/99, Mon
10/15/98, Thu, 12:00 AM	11/2/98, Mon, 11:59 PM	11/15/98, Sun	12/15/98, Tue	12/16/98, Wed	3/15/99, Mon
11/2/98, Mon, 12:00 AM	11/16/98, Mon, 11:59 PM	12/1/98, Tue	12/31/98, Thu	1/1/99, Fri	3/31/99, Wed
11/16/98, Mon, 12:00 AM	12/1/98, Tue, 11:59 PM	12/15/98, Tue	1/14/99, Thu	1/15/99, Fri	4/14/99, Wed
12/1/98, Tue, 12:00 AM	12/15/98, Tue, 11:59 PM	1/1/99, Fri	2/1/99, Mon	2/2/99, Tue	5/1/99, Sat
12/15/98, Tue, 12:00 AM	12/31/98, Thu, 11:59 PM	1/15/99, Fri	2/16/99, Tue	2/17/99, Wed	5/15/99, Sat
12/31/98, Thu, 12:00 AM	1/15/99, Fri, 11:59 PM	2/1/99, Mon	3/3/99, Wed	3/4/99, Thu	6/1/99, Tue
1/15/99, Fri, 12:00 AM	2/1/99, Mon, 11:59 PM	2/15/99, Mon	3/17/99, Wed	3/18/99, Thu	6/15/99, Tue
2/1/99, Mon, 12:00 AM	2/16/99, Tue, 11:59 PM	3/1/99, Mon	3/31/99, Wed	4/1/99, Thu	6/29/99, Tue
2/16/99, Tue, 12:00 AM	3/1/99, Mon, 11:59 PM	3/15/99, Mon	4/14/99, Wed	4/15/99, Thu	7/13/99, Tue
3/1/99, Mon, 12:00 AM	3/15/99, Mon, 11:59 PM	4/1/99, Thu	5/3/99, Mon	5/4/99, Tue	7/30/99, Fri
3/15/99, Mon, 12:00 AM	4/1/99, Thu, 11:59 PM	4/15/99, Thu	5/17/99, Mon	5/18/99, Tue	8/13/99, Fri
4/1/99, Thu, 12:00 AM	4/15/99, Thu, 11:59 PM	5/1/99, Sat	6/1/99, Tue	6/2/99, Wed	8/29/99, Sun
4/15/99, Thu, 12:00 AM	4/30/99, Fri, 11:59 PM	5/15/99, Sat	6/14/99, Mon	6/15/99, Tue	9/12/99, Sun
4/30/99, Fri, 12:00 AM	5/14/99, Fri, 11:59 PM	6/1/99, Tue	7/1/99, Thu	7/2/99, Fri	9/29/99, Wed
5/14/99, Fri, 12:00 AM	6/1/99, Tue, 11:59 PM	6/15/99, Tue	7/15/99, Thu	7/16/99, Fri	10/13/99, Wed

State Holidays	1998	1999
New Year's Day	1/1/98, Thu	1/1/99, Fri
Human Rights Day	1/19/98, Mon	1/18/99, Mon
Presidents' Day	2/16/98, Mon	2/15/99, Mon
Memorial Day	5/25/98, Mon	5/31/99, Mon
Independence Day	7/3/98, Fri	7/5/99, Mon
Pioneer Day	7/24/98, Fri	7/23/99, Fri
Labor Day	9/7/98, Mon	9/6/99, Mon
Columbus Day	10/12/98, Mon	10/11/99, Mon
Veterans' Day	11/11/98, Wed	11/11/99, Thu
Thanksgiving Day	11/26/98, Thu	11/25/99, Thu
Christmas	12/25/98, Fri	12/24/99, Fri

NOTES:

* Dates have been adjusted to account for weekends and holidays.

This schedule reflects filing deadlines established by Section R15-4-3.

** The mandatory comment period for a Proposed Rule is 30 days.

The 30th day must also be a working day. The dates in this column reflect these requirements. Subsections 63-46a-4(6) and (7).

***Statute requires that the Notice of Effective Date must be received by the Division of Administrative Rules on or before the effective date of the rule. Subsection 63-46a-4(7).

**** Statute provides that a rule may be made effective "no fewer than 30 nor more than 120 days after the publication date." Subsection 63-46a-4(7)

10/1/97

120-Day Calculation Table

Effective	Expires	Effective	Expires	Effective	Expires	Effective	Expires
11/10/97 Mon	3/10/98 Tue	12/29/97 Mon	4/28/98 Tue	2/16/98 Mon	6/16/98 Tue	4/6/98 Mon	8/4/98 Tue
11/11/97 Tue	3/11/98 Wed	12/30/97 Tue	4/29/98 Wed	2/17/98 Tue	6/17/98 Wed	4/7/98 Tue	8/5/98 Wed
11/12/97 Wed	3/12/98 Thu	12/31/97 Wed	4/30/98 Thu	2/18/98 Wed	6/18/98 Thu	4/8/98 Wed	8/6/98 Thu
11/13/97 Thu	3/13/98 Fri	1/1/98 Thu	5/1/98 Fri	2/19/98 Thu	6/19/98 Fri	4/9/98 Thu	8/7/98 Fri
11/14/97 Fri	3/14/98 Sat	1/2/98 Fri	5/2/98 Sat	2/20/98 Fri	6/20/98 Sat	4/10/98 Fri	8/8/98 Sat
11/15/97 Sat	3/15/98 Sun	1/3/98 Sat	5/3/98 Sun	2/21/98 Sat	6/21/98 Sun	4/11/98 Sat	8/9/98 Sun
11/16/97 Sun	3/16/98 Mon	1/4/98 Sun	5/4/98 Mon	2/22/98 Sun	6/22/98 Mon	4/12/98 Sun	8/10/98 Mon
11/17/97 Mon	3/17/98 Tue	1/5/98 Mon	5/5/98 Tue	2/23/98 Mon	6/23/98 Tue	4/13/98 Mon	8/11/98 Tue
11/18/97 Tue	3/18/98 Wed	1/6/98 Tue	5/6/98 Wed	2/24/98 Tue	6/24/98 Wed	4/14/98 Tue	8/12/98 Wed
11/19/97 Wed	3/19/98 Thu	1/7/98 Wed	5/7/98 Thu	2/25/98 Wed	6/25/98 Thu	4/15/98 Wed	8/13/98 Thu
11/20/97 Thu	3/20/98 Fri	1/8/98 Thu	5/8/98 Fri	2/26/98 Thu	6/26/98 Fri	4/16/98 Thu	8/14/98 Fri
11/21/97 Fri	3/21/98 Sat	1/9/98 Fri	5/9/98 Sat	2/27/98 Fri	6/27/98 Sat	4/17/98 Fri	8/15/98 Sat
11/22/97 Sat	3/22/98 Sun	1/10/98 Sat	5/10/98 Sun	2/28/98 Sat	6/28/98 Sun	4/18/98 Sat	8/16/98 Sun
11/23/97 Sun	3/23/98 Mon	1/11/98 Sun	5/11/98 Mon	3/1/98 Sun	6/29/98 Mon	4/19/98 Sun	8/17/98 Mon
11/24/97 Mon	3/24/98 Tue	1/12/98 Mon	5/12/98 Tue	3/2/98 Mon	6/30/98 Tue	4/20/98 Mon	8/18/98 Tue
11/25/97 Tue	3/25/98 Wed	1/13/98 Tue	5/13/98 Wed	3/3/98 Tue	7/1/98 Wed	4/21/98 Tue	8/19/98 Wed
11/26/97 Wed	3/26/98 Thu	1/14/98 Wed	5/14/98 Thu	3/4/98 Wed	7/2/98 Thu	4/22/98 Wed	8/20/98 Thu
11/27/97 Thu	3/27/98 Fri	1/15/98 Thu	5/15/98 Fri	3/5/98 Thu	7/3/98 Fri	4/23/98 Thu	8/21/98 Fri
11/28/97 Fri	3/28/98 Sat	1/16/98 Fri	5/16/98 Sat	3/6/98 Fri	7/4/98 Sat	4/24/98 Fri	8/22/98 Sat
11/29/97 Sat	3/29/98 Sun	1/17/98 Sat	5/17/98 Sun	3/7/98 Sat	7/5/98 Sun	4/25/98 Sat	8/23/98 Sun
11/30/97 Sun	3/30/98 Mon	1/18/98 Sun	5/18/98 Mon	3/8/98 Sun	7/6/98 Mon	4/26/98 Sun	8/24/98 Mon
12/1/97 Mon	3/31/98 Tue	1/19/98 Mon	5/19/98 Tue	3/9/98 Mon	7/7/98 Tue	4/27/98 Mon	8/25/98 Tue
12/2/97 Tue	4/1/98 Wed	1/20/98 Tue	5/20/98 Wed	3/10/98 Tue	7/8/98 Wed	4/28/98 Tue	8/26/98 Wed
12/3/97 Wed	4/2/98 Thu	1/21/98 Wed	5/21/98 Thu	3/11/98 Wed	7/9/98 Thu	4/29/98 Wed	8/27/98 Thu
12/4/97 Thu	4/3/98 Fri	1/22/98 Thu	5/22/98 Fri	3/12/98 Thu	7/10/98 Fri	4/30/98 Thu	8/28/98 Fri
12/5/97 Fri	4/4/98 Sat	1/23/98 Fri	5/23/98 Sat	3/13/98 Fri	7/11/98 Sat	5/1/98 Fri	8/29/98 Sat
12/6/97 Sat	4/5/98 Sun	1/24/98 Sat	5/24/98 Sun	3/14/98 Sat	7/12/98 Sun	5/2/98 Sat	8/30/98 Sun
12/7/97 Sun	4/6/98 Mon	1/25/98 Sun	5/25/98 Mon	3/15/98 Sun	7/13/98 Mon	5/3/98 Sun	8/31/98 Mon
12/8/97 Mon	4/7/98 Tue	1/26/98 Mon	5/26/98 Tue	3/16/98 Mon	7/14/98 Tue	5/4/98 Mon	9/1/98 Tue
12/9/97 Tue	4/8/98 Wed	1/27/98 Tue	5/27/98 Wed	3/17/98 Tue	7/15/98 Wed	5/5/98 Tue	9/2/98 Wed
12/10/97 Wed	4/9/98 Thu	1/28/98 Wed	5/28/98 Thu	3/18/98 Wed	7/16/98 Thu	5/6/98 Wed	9/3/98 Thu
12/11/97 Thu	4/10/98 Fri	1/29/98 Thu	5/29/98 Fri	3/19/98 Thu	7/17/98 Fri	5/7/98 Thu	9/4/98 Fri
12/12/97 Fri	4/11/98 Sat	1/30/98 Fri	5/30/98 Sat	3/20/98 Fri	7/18/98 Sat	5/8/98 Fri	9/5/98 Sat
12/13/97 Sat	4/12/98 Sun	1/31/98 Sat	5/31/98 Sun	3/21/98 Sat	7/19/98 Sun	5/9/98 Sat	9/6/98 Sun
12/14/97 Sun	4/13/98 Mon	2/1/98 Sun	6/1/98 Mon	3/22/98 Sun	7/20/98 Mon	5/10/98 Sun	9/7/98 Mon
12/15/97 Mon	4/14/98 Tue	2/2/98 Mon	6/2/98 Tue	3/23/98 Mon	7/21/98 Tue	5/11/98 Mon	9/8/98 Tue
12/16/97 Tue	4/15/98 Wed	2/3/98 Tue	6/3/98 Wed	3/24/98 Tue	7/22/98 Wed	5/12/98 Tue	9/9/98 Wed
12/17/97 Wed	4/16/98 Thu	2/4/98 Wed	6/4/98 Thu	3/25/98 Wed	7/23/98 Thu	5/13/98 Wed	9/10/98 Thu
12/18/97 Thu	4/17/98 Fri	2/5/98 Thu	6/5/98 Fri	3/26/98 Thu	7/24/98 Fri	5/14/98 Thu	9/11/98 Fri
12/19/97 Fri	4/18/98 Sat	2/6/98 Fri	6/6/98 Sat	3/27/98 Fri	7/25/98 Sat	5/15/98 Fri	9/12/98 Sat
12/20/97 Sat	4/19/98 Sun	2/7/98 Sat	6/7/98 Sun	3/28/98 Sat	7/26/98 Sun	5/16/98 Sat	9/13/98 Sun
12/21/97 Sun	4/20/98 Mon	2/8/98 Sun	6/8/98 Mon	3/29/98 Sun	7/27/98 Mon	5/17/98 Sun	9/14/98 Mon
12/22/97 Mon	4/21/98 Tue	2/9/98 Mon	6/9/98 Tue	3/30/98 Mon	7/28/98 Tue	5/18/98 Mon	9/15/98 Tue
12/23/97 Tue	4/22/98 Wed	2/10/98 Tue	6/10/98 Wed	3/31/98 Tue	7/29/98 Wed	5/19/98 Tue	9/16/98 Wed
12/24/97 Wed	4/23/98 Thu	2/11/98 Wed	6/11/98 Thu	4/1/98 Wed	7/30/98 Thu	5/20/98 Wed	9/17/98 Thu
12/25/97 Thu	4/24/98 Fri	2/12/98 Thu	6/12/98 Fri	4/2/98 Thu	7/31/98 Fri	5/21/98 Thu	9/18/98 Fri
12/26/97 Fri	4/25/98 Sat	2/13/98 Fri	6/13/98 Sat	4/3/98 Fri	8/1/98 Sat	5/22/98 Fri	9/19/98 Sat
12/27/97 Sat	4/26/98 Sun	2/14/98 Sat	6/14/98 Sun	4/4/98 Sat	8/2/98 Sun	5/23/98 Sat	9/20/98 Sun
12/28/97 Sun	4/27/98 Mon	2/15/98 Sun	6/15/98 Mon	4/5/98 Sun	8/3/98 Mon	5/24/98 Sun	9/21/98 Mon

Effective	Expires	Effective	Expires	Effective	Expires	Effective	Expires
5/25/98 Mon	9/22/98 Tue	7/20/98 Mon	11/17/98 Tue	9/14/98 Mon	1/12/99 Tue	11/9/98 Mon	3/9/99 Tue
5/26/98 Tue	9/23/98 Wed	7/21/98 Tue	11/18/98 Wed	9/15/98 Tue	1/13/99 Wed	11/10/98 Tue	3/10/99 Wed
5/27/98 Wed	9/24/98 Thu	7/22/98 Wed	11/19/98 Thu	9/16/98 Wed	1/14/99 Thu	11/11/98 Wed	3/11/99 Thu
5/28/98 Thu	9/25/98 Fri	7/23/98 Thu	11/20/98 Fri	9/17/98 Thu	1/15/99 Fri	11/12/98 Thu	3/12/99 Fri
5/29/98 Fri	9/26/98 Sat	7/24/98 Fri	11/21/98 Sat	9/18/98 Fri	1/16/99 Sat	11/13/98 Fri	3/13/99 Sat
5/30/98 Sat	9/27/98 Sun	7/25/98 Sat	11/22/98 Sun	9/19/98 Sat	1/17/99 Sun	11/14/98 Sat	3/14/99 Sun
5/31/98 Sun	9/28/98 Mon	7/26/98 Sun	11/23/98 Mon	9/20/98 Sun	1/18/99 Mon	11/15/98 Sun	3/15/99 Mon
6/1/98 Mon	9/29/98 Tue	7/27/98 Mon	11/24/98 Tue	9/21/98 Mon	1/19/99 Tue	11/16/98 Mon	3/16/99 Tue
6/2/98 Tue	9/30/98 Wed	7/28/98 Tue	11/25/98 Wed	9/22/98 Tue	1/20/99 Wed	11/17/98 Tue	3/17/99 Wed
6/3/98 Wed	10/1/98 Thu	7/29/98 Wed	11/26/98 Thu	9/23/98 Wed	1/21/99 Thu	11/18/98 Wed	3/18/99 Thu
6/4/98 Thu	10/2/98 Fri	7/30/98 Thu	11/27/98 Fri	9/24/98 Thu	1/22/99 Fri	11/19/98 Thu	3/19/99 Fri
6/5/98 Fri	10/3/98 Sat	7/31/98 Fri	11/28/98 Sat	9/25/98 Fri	1/23/99 Sat	11/20/98 Fri	3/20/99 Sat
6/6/98 Sat	10/4/98 Sun	8/1/98 Sat	11/29/98 Sun	9/26/98 Sat	1/24/99 Sun	11/21/98 Sat	3/21/99 Sun
6/7/98 Sun	10/5/98 Mon	8/2/98 Sun	11/30/98 Mon	9/27/98 Sun	1/25/99 Mon	11/22/98 Sun	3/22/99 Mon
6/8/98 Mon	10/6/98 Tue	8/3/98 Mon	12/1/98 Tue	9/28/98 Mon	1/26/99 Tue	11/23/98 Mon	3/23/99 Tue
6/9/98 Tue	10/7/98 Wed	8/4/98 Tue	12/2/98 Wed	9/29/98 Tue	1/27/99 Wed	11/24/98 Tue	3/24/99 Wed
6/10/98 Wed	10/8/98 Thu	8/5/98 Wed	12/3/98 Thu	9/30/98 Wed	1/28/99 Thu	11/25/98 Wed	3/25/99 Thu
6/11/98 Thu	10/9/98 Fri	8/6/98 Thu	12/4/98 Fri	10/1/98 Thu	1/29/99 Fri	11/26/98 Thu	3/26/99 Fri
6/12/98 Fri	10/10/98 Sat	8/7/98 Fri	12/5/98 Sat	10/2/98 Fri	1/30/99 Sat	11/27/98 Fri	3/27/99 Sat
6/13/98 Sat	10/11/98 Sun	8/8/98 Sat	12/6/98 Sun	10/3/98 Sat	1/31/99 Sun	11/28/98 Sat	3/28/99 Sun
6/14/98 Sun	10/12/98 Mon	8/9/98 Sun	12/7/98 Mon	10/4/98 Sun	2/1/99 Mon	11/29/98 Sun	3/29/99 Mon
6/15/98 Mon	10/13/98 Tue	8/10/98 Mon	12/8/98 Tue	10/5/98 Mon	2/2/99 Tue	11/30/98 Mon	3/30/99 Tue
6/16/98 Tue	10/14/98 Wed	8/11/98 Tue	12/9/98 Wed	10/6/98 Tue	2/3/99 Wed	12/1/98 Tue	3/31/99 Wed
6/17/98 Wed	10/15/98 Thu	8/12/98 Wed	12/10/98 Thu	10/7/98 Wed	2/4/99 Thu	12/2/98 Wed	4/1/99 Thu
6/18/98 Thu	10/16/98 Fri	8/13/98 Thu	12/11/98 Fri	10/8/98 Thu	2/5/99 Fri	12/3/98 Thu	4/2/99 Fri
6/19/98 Fri	10/17/98 Sat	8/14/98 Fri	12/12/98 Sat	10/9/98 Fri	2/6/99 Sat	12/4/98 Fri	4/3/99 Sat
6/20/98 Sat	10/18/98 Sun	8/15/98 Sat	12/13/98 Sun	10/10/98 Sat	2/7/99 Sun	12/5/98 Sat	4/4/99 Sun
6/21/98 Sun	10/19/98 Mon	8/16/98 Sun	12/14/98 Mon	10/11/98 Sun	2/8/99 Mon	12/6/98 Sun	4/5/99 Mon
6/22/98 Mon	10/20/98 Tue	8/17/98 Mon	12/15/98 Tue	10/12/98 Mon	2/9/99 Tue	12/7/98 Mon	4/6/99 Tue
6/23/98 Tue	10/21/98 Wed	8/18/98 Tue	12/16/98 Wed	10/13/98 Tue	2/10/99 Wed	12/8/98 Tue	4/7/99 Wed
6/24/98 Wed	10/22/98 Thu	8/19/98 Wed	12/17/98 Thu	10/14/98 Wed	2/11/99 Thu	12/9/98 Wed	4/8/99 Thu
6/25/98 Thu	10/23/98 Fri	8/20/98 Thu	12/18/98 Fri	10/15/98 Thu	2/12/99 Fri	12/10/98 Thu	4/9/99 Fri
6/26/98 Fri	10/24/98 Sat	8/21/98 Fri	12/19/98 Sat	10/16/98 Fri	2/13/99 Sat	12/11/98 Fri	4/10/99 Sat
6/27/98 Sat	10/25/98 Sun	8/22/98 Sat	12/20/98 Sun	10/17/98 Sat	2/14/99 Sun	12/12/98 Sat	4/11/99 Sun
6/28/98 Sun	10/26/98 Mon	8/23/98 Sun	12/21/98 Mon	10/18/98 Sun	2/15/99 Mon	12/13/98 Sun	4/12/99 Mon
6/29/98 Mon	10/27/98 Tue	8/24/98 Mon	12/22/98 Tue	10/19/98 Mon	2/16/99 Tue	12/14/98 Mon	4/13/99 Tue
6/30/98 Tue	10/28/98 Wed	8/25/98 Tue	12/23/98 Wed	10/20/98 Tue	2/17/99 Wed	12/15/98 Tue	4/14/99 Wed
7/1/98 Wed	10/29/98 Thu	8/26/98 Wed	12/24/98 Thu	10/21/98 Wed	2/18/99 Thu	12/16/98 Wed	4/15/99 Thu
7/2/98 Thu	10/30/98 Fri	8/27/98 Thu	12/25/98 Fri	10/22/98 Thu	2/19/99 Fri	12/17/98 Thu	4/16/99 Fri
7/3/98 Fri	10/31/98 Sat	8/28/98 Fri	12/26/98 Sat	10/23/98 Fri	2/20/99 Sat	12/18/98 Fri	4/17/99 Sat
7/4/98 Sat	11/1/98 Sun	8/29/98 Sat	12/27/98 Sun	10/24/98 Sat	2/21/99 Sun	12/19/98 Sat	4/18/99 Sun
7/5/98 Sun	11/2/98 Mon	8/30/98 Sun	12/28/98 Mon	10/25/98 Sun	2/22/99 Mon	12/20/98 Sun	4/19/99 Mon
7/6/98 Mon	11/3/98 Tue	8/31/98 Mon	12/29/98 Tue	10/26/98 Mon	2/23/99 Tue	12/21/98 Mon	4/20/99 Tue
7/7/98 Tue	11/4/98 Wed	9/1/98 Tue	12/30/98 Wed	10/27/98 Tue	2/24/99 Wed	12/22/98 Tue	4/21/99 Wed
7/8/98 Wed	11/5/98 Thu	9/2/98 Wed	12/31/98 Thu	10/28/98 Wed	2/25/99 Thu	12/23/98 Wed	4/22/99 Thu
7/9/98 Thu	11/6/98 Fri	9/3/98 Thu	1/1/99 Fri	10/29/98 Thu	2/26/99 Fri	12/24/98 Thu	4/23/99 Fri
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7/12/98 Sun	11/9/98 Mon	9/6/98 Sun	1/4/99 Mon	11/1/98 Sun	3/1/99 Mon	12/27/98 Sun	4/26/99 Mon
7/13/98 Mon	11/10/98 Tue	9/7/98 Mon	1/5/99 Tue	11/2/98 Mon	3/2/99 Tue	12/28/98 Mon	4/27/99 Tue
7/14/98 Tue	11/11/98 Wed	9/8/98 Tue	1/6/99 Wed	11/3/98 Tue	3/3/99 Wed	12/29/98 Tue	4/28/99 Wed
7/15/98 Wed	11/12/98 Thu	9/9/98 Wed	1/7/99 Thu	11/4/98 Wed	3/4/99 Thu	12/30/98 Wed	4/29/99 Thu
7/16/98 Thu	11/13/98 Fri	9/10/98 Thu	1/8/99 Fri	11/5/98 Thu	3/5/99 Fri	12/31/98 Thu	4/30/99 Fri
7/17/98 Fri	11/14/98 Sat	9/11/98 Fri	1/9/99 Sat	11/6/98 Fri	3/6/99 Sat	1/1/99 Fri	5/1/99 Sat
7/18/98 Sat	11/15/98 Sun	9/12/98 Sat	1/10/99 Sun	11/7/98 Sat	3/7/99 Sun	1/2/99 Sat	5/2/99 Sun
7/19/98 Sun	11/16/98 Mon	9/13/98 Sun	1/11/99 Mon	11/8/98 Sun	3/8/99 Mon	1/3/99 Sun	5/3/99 Mon

X. APPENDIX J: LIST OF AGENCY CODE NUMBERS

Updated: March 12, 1998

ADMINISTRATIVE SERVICES

- R13. Administration.
- R15. Administrative Rules.
- R17. Archives.*
- R19. Building Board.*
- R20. Chief Information Officer.* (See R365)
- R21. Debt Collection.
- R23. Facilities Construction and Management.
- R25. Finance.
- R27. Fleet Operations.
- R28. Fleet Operations, Surplus Property.
- R29. Information Technology Services.
- R31. Procurement Policy Board.*
- R33. Purchasing and General Services.
- R35. Records Committee.*
- R37. Risk Management.
- R39. Sports Authority (Utah).*

AGRICULTURE AND FOOD

- R51. Administration.
- R58. Animal Industry.
- R63. Chemistry Laboratory.
- R65. Marketing and Conservation
- R68. Plant Industry.
- R70. Regulatory Services.

ALCOHOLIC BEVERAGE CONTROL

- R81. Administration.
- R83. Alcoholic Beverage Control.*

ARMORY BOARD

- R91. Administration.*

AT RISK CHILDREN AND YOUTH

- R98. Administration.*

ATTORNEY GENERAL

- R105. Administration.
- R107. Criminal Appeals.*
- R109. Education.*
- R111. Fair Business Enforcement.*
- R113. Governmental Affairs.*
- R115. Human Services.*
- R117. Litigation.*
- R119. Physical Resources.*
- R121. Tax and Business.*

AUDITOR

- R123. Administration.

BEEF COUNCIL

- R130. Administration.*

CAREER SERVICE REVIEW BOARD

- R137. Administration.

COMMERCE

- R151. Administration.
- R152. Consumer Protection.
- R154. Corporations and Commercial Code.
- R156. Occupational and Professional Licensing.
- R158. Public Utilities.*
- R160. Public Utilities, Consumer Services (Committee of).*
- R162. Real Estate.
- R164. Securities.

COMMUNITY AND ECONOMIC DEVELOPMENT

- R182. Administration.
- R184. Business and Economic Development.
- R185. Business and Economic Development, Business Creation/Centers of Excellence.*
- R186. Business and Economic Development, Business Expansion and Retention.*
- R187. Business and Economic Development, Ethnic Offices.*
- R188. Business and Economic Development, Ethnic Offices, Asian Affairs.*
- R189. Business and Economic Development, Ethnic Offices, Black Affairs.*
- R190. Business and Economic Development, Ethnic Offices, Hispanic Affairs.*
- R192. Business and Economic Development, Film Commission.*
- R193. Business and Economic Development, International Development.*
- R195. Business and Economic Development, National Development.*
- R196. Business and Economic Development, Procurement Outreach.*
- R197. Business and Economic Development, Rural Development.*
- R199. Community Development.
- R200. Community Development, Community Development Block Grant.*
- R201. Community Development, Community Impact Fund.*
- R202. Community Development, Community Services.
- R203. Community Development, Energy Services.
- R204. Community Development, Expositions (Board of).*
- R207. Community Development, Fine Arts.
- R208. Community Development, Fine Arts, Community State Partnership.*

- R210. Community Development, Fine Arts, Federal Grants.*
- R212. Community Development, History.
- R214. Community Development; History; Collections Management, Public Programs and Education.*
- R216. Community Development, History, Preservation.*
- R218. Community Development, History, Publications.*
- R220. Community Development, Housing/Rehabilitation Homeless Assistance.*
- R221. Community Development, Industrial Development Bonds/Disaster Relief Fund.*
- R223. Community Development, Library.
- R224. Community Development, Library, Blind and Physically Handicapped Services.*
- R225. Community Development, Library, Development Services.*
- R227. Community Development, Library, Information Services.*
- R229. Community Development, Library, Systems and Telecommunications.*
- R230. Indian Affairs.
- R232. Travel Development.*

CORRECTIONS

- R251. Administration.
- R253. Correctional Industries.*
- R255. Inmate Placement Program Bureau.*

CRIME VICTIM REPARATIONS

- R270. Administration.

EDUCATION

- R277. Administration.
- R280. Applied Technology Education (Board for), Rehabilitation.
- R281. Textbook Commission.*
- R283. Vocational Education.*
- R287. Vocational Rehabilitation.*

ENVIRONMENTAL QUALITY

- R305. Administration.
- R307. Air Quality.
- R309. Drinking Water.
- R311. Environmental Response and Remediation.
- R313. Radiation Control.
- R315. Solid and Hazardous Waste.
- R317. Water Quality.

FAIR CORPORATION (UTAH STATE)

- R325. Administration.

FINANCIAL INSTITUTIONS

- R331. Administration.
- R333. Banks.
- R335. Consumer Credit.
- R337. Credit Unions.
- R339. Industrial Loan Corporations.

GOVERNOR

- R355. Administration.
- R357. Criminal and Juvenile Justice.*
- R359. House Fellowships.*
- R361. Planning and Budget.
- R363. Planning and Budget, Administrative Rules Review.*
- R365. Planning and Budget, Chief Information Officer.
- R367. Science Advisor.*

HEALTH

- R380. Administration.
- R382. Community Health Services.*
- R384. Community Health Services, Chronic Disease.*
- R386. Community Health Services, Epidemiology.
- R388. Community Health Services, HIV/AIDS Prevention and Control.
- R390. Community Health Services, Health Promotion/Risk Reduction.*
- R392. Community Health Services, Environmental Services.
- R394. Family Health Services.*
- R398. Family Health Services, Children with Special Health Care Needs.
- R400. Family Health Services, Baby Watch Early Intervention Services.*
- R402. Family Health Services, Health Education Services.*
- R404. Family Health Services, MCH Primary Care Resources.*
- R406. Family Health Services, WIC Services.
- R408. Health (Board of).*
- R410. Health Care Financing.
- R414. Health Care Financing, Coverage and Reimbursement Policy.
- R416. Health Care Financing, Financial Services.*
- R420. Health Care Financing, Medical Assistance Program.
- R422. Health Care Financing, Managed Health Care.*
- R424. Health Systems Improvement.*
- R425. Health Systems Improvement, Community Health Nursing.
- R426. Health Systems Improvement, Emergency Medical Services.
- R427. Health Systems Improvement, Facility Review.*
- R428. Health Data Analysis.
- R430. Health Systems Improvement, Child Care Licensing.
- R432. Health Systems Improvement, Health Facility Licensure.
- R434. Health Systems Improvement, Primary Care and Rural Health.
- R436. Vital Records and Health Statistics.
- R438. Laboratory Services.
- R440. Laboratory Services, Clinical Chemistry.*
- R442. Laboratory Services, Environmental Chemistry and Toxicology.*
- R444. Laboratory Services, Laboratory Improvement.
- R446. Laboratory Services, Microbiology.*

R448. Medical Examiner.*

HOUSING FINANCE AGENCY

R460. Administration.

HUMAN RESOURCE MANAGEMENT

R477. Administration.

HUMAN SERVICES

R495. Administration.
 R497. Administration, Administrative Hearings.
 R501. Administration, Administrative Services, Licensing.
 R503. Administration, Administrative Services, Management Services.
 R505. Administration, Liability Management.
 R507. Administration, Public Information Officer.*
 R509. Aging (Board of).
 R510. Aging and Adult Services.
 R511. Family Services (Board of).
 R512. Child and Family Services.
 R515. Family Support, Food Stamp Office.*
 R517. Family Support, Policy Unit.*
 R518. Family Support, Program Unit.*
 R522. Mental Health (Board of).
 R523. Mental Health.
 R525. Mental Health, State Hospital.
 R527. Recovery Services.
 R529. Recovery Services, Child Support Enforcement.*
 R531. Collection Services.*
 R533. Fiscal Management.*
 R538. Services for People with Disabilities (Board of).
 R539. Services for People with Disabilities.
 R540. Services for People with Disabilities, Developmental Center (Training School).
 R543. Substance Abuse (Board of).
 R544. Substance Abuse.
 R546. Youth Corrections (Board of).
 R547. Youth Corrections.

INSURANCE

R590. Administration.

JUDICIAL CONDUCT COMMISSION

R595. Administration.

LABOR COMMISSION

R600. Administration.
 R602. Adjudication.
 R604. Antidiscrimination and Labor, Administration.
 R606. Antidiscrimination and Labor, Antidiscrimination.
 R608. Antidiscrimination and Labor, Fair Housing.
 R610. Antidiscrimination and Labor, Labor.
 R612. Industrial Accidents.
 R613. Job Safety and Health.*
 R614. Occupational Safety and Health.
 R616. Safety.

LIEUTENANT GOVERNOR

R622. Administration.
 R623. Elections.*

MONEY MANAGEMENT COUNCIL

R628. Administration.

NATURAL RESOURCES

R634. Administration.
 R637. Energy and Resource Planning.
 R638. Geological Survey.
 R641. Oil, Gas and Mining Board.
 R642. Oil, Gas and Mining; Administration.
 R643. Oil, Gas and Mining; Abandoned Mine Reclamation.
 R645. Oil, Gas and Mining; Coal.
 R647. Oil, Gas and Mining; Non-Coal.
 R649. Oil, Gas and Mining; Oil and Gas.
 R651. Parks and Recreation.
 R652. Forestry, Fire and State Lands.
 R653. Water Resources.
 R655. Water Rights.
 R657. Wildlife Resources.

PARDONS (BOARD OF)

R671. Administration.

**PIONEER SESQUICENTENNIAL
CELEBRATION COORDINATING
COUNCIL (UTAH)**

R674. Administration.

PRIVATIZATION POLICY BOARD

R678. Administration.*

**PROFESSIONAL PRACTICES ADVISORY
COMMISSION**

R686. Administration.

PUBLIC SAFETY

R698. Administration.
 R700. Administrative Services.*
 R702. Aero Bureau.*
 R704. Comprehensive Emergency Management.*
 R706. Crime Prevention.*
 R708. Driver License.
 R710. Fire Marshal.
 R712. Fire Marshal, Liquefied Petroleum Gas Board.*
 R714. Highway Patrol.
 R716. Highway Safety.*
 R718. Investigation.*
 R720. Law Enforcement and Technical Services.*
 R721. Law Enforcement and Technical Services, Communications Bureau.*
 R722. Law Enforcement and Technical Services, Criminal Identification.
 R724. Law Enforcement and Technical Services, Regulatory Licensing.
 R728. Peace Officer Standards and Training.

R730. Public Information.*

R732. Safety Council.*

PUBLIC SERVICE COMMISSION

R746. Administration.

REGENTS (BOARD OF)

R765. Administration.

R767. College of Eastern Utah.

R774. Dixie College.*

R781. Higher Education Assistance Authority (UHEAA).*

R784. Salt Lake Community College.

R791. Snow College.*

R798. Southern Utah University.*

R805. University of Utah, Administration.

R810. University of Utah, Parking and Transportation Services.

R813. Utah State University.*

R820. Utah Valley Community College.*

R827. Weber State University.*

RETIREMENT

R848. Administration.*

SCHOOL AND INSTITUTIONAL TRUST LANDS

R850. Administration.

TAX COMMISSION

R861. Administration.

R865. Auditing.

R867. Collections.

R873. Motor Vehicle.

R877. Motor Vehicle Enforcement.

R880. Operations.*

R884. Property Tax.

TECHNOLOGY FINANCE CORPORATION

R899. Administration.*

TRANSPORTATION

R907. Administration.

R909. Motor Carrier.

R911. Motor Carrier, Legal and Permitted Vehicles. *

R912. Motor Carrier, Ports of Entry.

R913. Operations.*

R914. Operations, Aeronautics.

R916. Operations, Construction.

R918. Operations, Maintenance.

R920. Operations, Traffic and Safety.

R922. Operations, Traffic and Safety, School Bus Standards Committee.*

R924. Planning and Programming.*

R926. Program Development.

R930. Preconstruction.

R931. Preconstruction, Location and Environmental Study.*

R932. Preconstruction, Materials and Research.*

R933. Preconstruction, Right of Way Acquisition.

R934. Preconstruction, Roadway Design.*

R936. Preconstruction, Structures.*

R938. Project Management.*

R940. Transportation Commission.*

TREASURER

R963. Administration.*

R966. Unclaimed Property.

WORKERS' COMPENSATION FUND

R980. Administration.

WORKFORCE SERVICES

R982. Administration.

R984. Adjudication.*

R986. Employment Development

R994. Workforce Information and Payment Services.

*as of the printing date, no rules have been promulgated for these titles.

XI. APPENDIX K: INDEXING INFORMATION—STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODES

TWO-DIGIT CODES

May 1996

In an effort to help regulatory agencies communicate information about administrative rules to affected industries, the Division of Administrative Rules (Division) asks agencies for "Indexing Information—Affected Industries (two-digit SIC Codes)." When an agency prepares a rule analysis, one of the boxes asks the agency to indicate which industry or industries will be affected by the rule.

The SIC Codes are the U.S. Government's standardized codes used to classify businesses by type of activity in which they are engaged. These codes are used to facilitate the collection, tabulation, presentation, and analysis of data relating to establishments. A more detailed listing, including the three-digit and four-digit SIC codes, is available from the Division.

All All industry

A. AGRICULTURE, FORESTRY, AND FISHING

- 01 Agricultural Production—crops
- 02 Agricultural Production—livestock
- 07 Agricultural Services
- 08 Forestry
- 09 Fishing, Hunting, and Trapping

B. MINING

- 10 Metal Mining
- 12 Coal Mining
- 13 Oil and Gas Extraction
- 14 Nonmetallic Minerals, Except Fuels

C. CONSTRUCTION

- 15 General Building Contractors
- 16 Heavy Construction, Ex. Building
- 17 Special Trade Contractors

D. MANUFACTURING

- 20 Food and Kindred Products
- 21 Tobacco Products
- 22 Textile Mill Products
- 23 Apparel and Other Textile Products
- 24 Lumber and Wood Products
- 25 Furniture and Fixtures
- 26 Paper and Allied Products
- 27 Printing and Publishing
- 28 Chemicals and Allied Products
- 29 Petroleum and Coal Products
- 30 Rubber and Misc. Plastics Products
- 31 Leather and Leather Products
- 32 Stone, Clay, and Glass Products
- 33 Primary Metal Industries
- 34 Fabricated Metal Products
- 35 Industrial Machinery and Equipment
- 36 Electronic + Other Electric Equipment

- 37 Transportation Equipment
- 38 Instruments and Related Products
- 39 Miscellaneous Manufacturing Industries

E. TRANSPORTATION AND PUBLIC UTILITIES

- 40 Railroad Transportation
- 41 Local and Interurban Passenger Transit
- 42 Trucking and Warehousing
- 43 U.S. Postal Service
- 44 Water Transportation
- 45 Transportation by Air
- 46 Pipelines, Except Natural Gas
- 47 Transportation Services
- 48 Communication
- 49 Electric, Gas, and Sanitary Services

F. WHOLESALE TRADE

- 50 Wholesale Trade—Durable Goods
- 51 Wholesale Trade-Nondurable Goods

G. RETAIL TRADE

- 52 Building Materials + Garden Supplies
- 53 General Merchandise Stores
- 54 Food Stores
- 55 Automotive Dealers + Service Stations
- 56 Apparel and Accessory Stores
- 57 Furniture and Homefurnishings Stores
- 58 Eating and Drinking Places
- 59 Miscellaneous Retail

H. FINANCE, INSURANCE, AND REAL ESTATE

- 60 Depository Institutions
- 61 Nondepository Institutions
- 62 Security and Commodity Brokers
- 63 Insurance Carriers
- 64 Insurance Agents, Brokers, + Service
- 65 Real Estate
- 67 Holding and Other Investment Offices

I. SERVICES

- 70 Hotels and Other Lodging Places
- 72 Personal Services
- 73 Business Services
- 75 Auto Repair, Services, and Parking
- 76 Miscellaneous Repair Services
- 78 Motion Pictures
- 79 Amusement + Recreation Services
- 80 Health Services
- 81 Legal Services
- 82 Educational Services
- 83 Social Services
- 84 Museums, Botanical, Zoological Gardens
- 86 Membership Organizations
- 87 Engineering + Management Services
- 88 Private Households
- 89 Services, NEC

J. PUBLIC ADMINISTRATION

- 91 Executive, Legislative, and General
- 92 Justice, Public Order, and Safety
- 93 Finance, Taxation, + Monetary Policy
- 94 Administration of Human Resources
- 95 Environmental Quality and Housing
- 96 Administration of Economic Programs
- 97 National Security and Intl. Affairs

K. NONCLASSIFIABLE ESTABLISHMENTS

- 99 Nonclassifiable Establishments

SOURCE: Office of Management and Budget, *Standard Industrial Classification (SIC) Manual*, Part II—Numerical List of Short Titles, 1987 (revised every 10 years).

XII. APPENDIX L: PREFERRED TERMS

DO NOT SAY:	SAY:
"above"	state the specific code section
"absolutely null and void"	"void"
"accorded"	"given"
"admit of"	"allow"
"aforementioned"	state the specific code section
"aforesaid"	state the specific code section
"afforded"	"given"
"alright"	"all right"
"all"	"each" or "any"
"all of the"	"all the"
"already"	state the specific code section
"an adequate number of"	"enough"
"an excessive number of"	"too many"
"any and all"	"any"
"and/or"	either word as appropriate or add the phrase "or both"
"approximately"	"about"
"a sufficient number of "	"enough"
"at the time"	"when"
"attempt" (verb)	"try"
"authorize and direct"	either word as appropriate
"be and the same hereby is"	"is"
"before mentioned"	state the specific code section
"below"	state the specific code section
"by and under"	either word as appropriate
"by and unless"	either word as appropriate
"by and with"	either word as appropriate
"by means of"	"by"
"category"	"kind," "class," or "group"
"cause it to be done"	"have it done"
"cease "	"stop"
"commence"	"begin" or "start"
"complete" (verb)	"finish"
"conceal"	"hide"
"consequence"	"result"
"constitute and appoint"	"appoint"
"deem"	"consider"
"deemed to be"	do not use unless a fiction is intended
"does not operate to"	"does not"
"donate"	"give"
"duly"	do not use

DO NOT SAY:	SAY:
"during such time as"	"while"
"during the course of"	"during"
"each and all"	"each"
"each and every"	"each"
"effectuate"	"carry out"
"employ" (meaning "use")	"use"
"endeavor" (verb)	"try"
"enter into a contract with"	"contract with"
"every"	"each" or "any"
"evidence, documentary or otherwise"	"evidence"
"evidence"	"show"
"examine witnesses and takes testimony"	"take testimony"
"expend"	"spend"
"expiration"	"end"
"fail, refuse, or neglect"	"fail"
"final and conclusive"	"final"
"following"	state the specific code section
"for the duration of"	"during"
"for the purpose of"	"to"
"for the reason that"	"because"
"forthwith"	"immediately"
"frequent"	"often"
"from and after"	"after"
"full and complete"	"complete"
"full force and effect"	"effect"
"give consideration to"	"consider"
"give recognition to"	"recognize"
"have knowledge of"	"know"
"have need of"	"need"
"have the effect of"	do not use unless a fiction is intended
"he or she" or "he/she"	"he"
"hereby"	do not use
"hereafter"	"after ____ takes effect"
"heretofore"	"before _____ takes effect"
"herein"	state the specific code section
"hereinafter"	state the specific code section
"hereinbefore"	state the specific code section
"his or her" or "his/her"	"his"
"in case"	"if"
"in cases in which"	"when"
"in order to"	"to"
"indicate"	"show" or "state"
"inquire"	"ask"

DO NOT SAY:	SAY:
"institute" (verb)	"begin" or "start"
"interrogate"	"question"
"in the case of"	"when"
"in the event that"	"if"
"in the interests of"	"for"
"is able to"	"can"
"is applicable"	"applies"
"is authorized to"	"may"
"is binding upon"	"binds"
"is defined and shall be construed to mean"	"means"
"is dependent on"	"depends"
"is directed to"	"shall"
"is empowered to"	"may"
"is entitled to"	"may"
"is hereby authorized and it shall be his duty to"	"shall"
"is in attendance at"	"attend"
"is required to"	"shall"
"is unable to"	"cannot"
"it is directed"	"shall"
"it is his duty to"	"shall"
"it is lawful to"	"may"
"it is the duty"	"shall"
"it shall be lawful"	"may"
"law passed"	"law enacted"
"made and entered into"	"made"
"make application"	"apply"
"make an appointment of"	"appoint"
"make payment"	"pay"
"make provision for"	"provide"
"matter transmitted through the mail"	"mail"
"may be treated as"	do not use unless a fiction is intended
"means and includes"	either word as appropriate
"member of a partnership"	"partner"
"minimum"	"least"
"modify"	"change"
"necessitate"	"require"
"negotiate" (as in "_____ a contract")	"make"
"none whatsoever"	"none"
"not later than"	"before"
"now"	state a specific date
"null and void"	"void"
"obtain"	"get"

DO NOT SAY:	SAY:
"occasion" (verb)	"cause"
"of a technical nature"	"technical"
"on and after July 1"	"after June 30"
"on his own application"	"at his request"
"on the part of"	"by"
"order and direct"	either word as appropriate
"or, in the alternative"	"or"
"over and above"	"exceed"
"per annum"	"each year"
"per centum"	"percent"
"per day"	"a day"
"per foot"	"a foot"
"period of time"	"period"
"person or persons"	"person"
"possess"	"have"
"preceding"	state the specific code section
"presently in progress"	"in progress"
"preserve"	"keep"
"prior"	"earlier"
"prior to"	"before"
"prosecute its business"	"carry on its business"
"provided, that"	"except that"
"provided, however, that"	"except that"
"provisions of section"	"section"
"purchase" (verb)	"buy"
"remainder"	"rest"
"render" (meaning "give")	"give"
"render" (meaning "cause to be")	"make"
"require" (meaning "need")	"need"
"retain"	"keep"
"rules and regulations"	use "rules" to refer to Utah administrative rules; use "regulations" to refer to federal regulations
"said"	use the appropriate article; e.g., "the", "that", "these"
"same"	use the appropriate article; e.g., "the", "that", "these"
"shall be considered to be"	do not use unless a fiction is intended
"shall be construed to mean"	do not use unless a fiction is intended
"shall have the power to"	"may"
"sole and exclusive"	"exclusive"
"some"	state a specific number or amount
"specified" (meaning "listed")	"named"
"subsequent to"	"after"

DO NOT SAY:	SAY:
"such"	do not use
"suffer" (meaning "allowed")	"allow"
"terminate"	"end"
"the place of his abode"	"his abode"
"thereof"	"of"
"therewith"	"with"
"to the effect that"	"that"
"to or until"	"until"
"to wit"	do not use
"transmit"	"send"
"under the provisions"	"under"
"unless and until"	either word as appropriate
"until such time as"	"until"
"utilize" (meaning "use")	"use"
"whatsoever"	do not use
"whensoever"	do not use
"wheresoever"	do not use
"whosoever"	do not use
"whenever"	"when"
"with the object of"	"to"
"with reference to"	"for"

XIII. APPENDIX M: PROBLEM WORDS AND EXPRESSIONS DEFINED

TERM:	DEFINITION:
Adjacent:	"Lying near."
Contiguous:	"Touching."
Advise:	verb - "To counsel."
Advice:	noun - "Opinion" or "recommendation."
Affect:	verb - "To influence" or "to assume."
Effect:	noun - "Result" or "accomplishment;" verb - "to cause" or "to bring about."
Affective:	"Caused by or expressing feeling or emotion."
Effective:	Broader, "producing the intended or expected results."
Allow:	"To grant."
Permit:	More formal and specific but essentially the same meaning.
Among:	Used to show the relationship of more than two objects or persons or when no close relationship exists. Use "and" as the connective. Never followed by "each" or "every."
Between:	Used to show the relationship of only two objects or persons or if a close relationship exists. Use "and" as the connective. Never followed by "each" or "every."
Amount:	Used to refer to anything that can be measured.
Number:	Used to refer only to items that can be counted in individual units.
Anyone:	Refers only to persons.
Anybody:	Same as "anyone."
And:	Should not be used to begin a sentence or used with "also." "And" is always preferred.
Also:	Should not be used to begin a sentence or used with "and."
Assure:	"To convince" or "to guarantee" and applies only to persons.
Ensure:	"To make certain" or "to guard against loss" and applies to both persons and property.
Insure:	To cover with insurance or "to guard against loss."
Because:	"Since" or "for the reason that." Its use with "reason" is redundant.
Biannual:	"Twice a year" or "semiannual."
Biennial:	"Once in two years" or "every two years."
Bimonthly:	"Once in two months" or "every two months."
Biweekly:	"Once in two weeks" or "every two weeks"
Capital:	Used in all meanings except that of a building.
Capitol:	A building or edifice.

TERM:	DEFINITION:
Censor:	"To examine."
Censure:	"To condemn" or "to find fault."
Client:	"Person who seeks the advice of lawyers or other professionals."
Customer:	"Buyer."
Patron:	"Buyer" or "one who supports with money or gifts."
Consecutive:	"Uninterrupted succession."
Successive:	"Following in a regular sequence."
Disinterested:	"Impartial" or "unbiased."
Uninterested:	"Indifference" or "lack of interest."
Disregardless:	Improper. Use "regardless," "unmindful," or "heedless."
Irregardless:	Improper. Use "regardless," "unmindful," or "heedless."
Dispense:	"To distribute in parts" or "to administer."
Disperse:	"To scatter" or "to dispel."
Disburse:	"To pay out" or "to expend."
Either/or:	"One of two." Not to be used to coordinate more than two words, phrases, or clauses.
Neither/nor:	"Not one of two." Not to be used to coordinate more than two words, phrases, or clauses.
Equable:	"Uniform" or "unchanging."
Equitable:	"Just," "right," or "fair."
Everybody:	Refers only to persons.
Everyone:	Same as "everybody."
Farther:	Refers to a measurable distance or space.
Further:	"Moreover." Also indicates greater in quantity, time, and degree.
Garnish:	"To decorate" or "to attach money or salary."
Garnishee:	"To attach money or salary" and is preferred when referring to "attaching."
Guarantee:	"Promise" or "assurance;" "warrant" or "pledge" when referring to debts. Both noun and verb.
Guaranty:	"Warrant" or "pledge" when referring to debts. Usually a noun.
Majority:	"More than half."
Minority:	"Number, amount, or part forming less than half of the whole."
Plurality:	"The highest number within a given number."
Prescribe:	"To direct" or "to order."
Proscribe:	"To banish" or "to outlaw."

TERM:	DEFINITION:
Principal:	noun - "A sum of money" or "chief person;" adjective - "main" or "foremost."
Principle:	"Governing rule or truth" or "doctrine."
Whether or Not:	"Or not" is usually unnecessary. To decide if it is needed, substitute "if" for "whether." If the "if" results in a different meaning, then "or not" is needed.
Who, Whoever:	Used as the subject of a verb or a predicate pronoun, as in "who can go."
Whom, Whomever:	Used as the object of a verb or preposition, as in "whom we saw."

GLOSSARY

“**Act**” means the Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

“**Administrative law**” means the body of law that concerns agency duties and powers, of limitations imposed by the Utah Constitution and by the other branches on these powers, and of laws made under these powers, is known as administrative law.

“**Administrative record**” means information an agency relies upon when making a rule under this chapter including copies of: (a) the proposed rule, change in the proposed rule, and the rule analysis form; (b) the public comment received and recorded by the agency during the public comment period; (c) the agency's response to the public comment; (d) the agency's analysis of the public comment; and (e) the agency's report of its decision-making process. (Subsection 63-46a-2(1))

“**Agency**” means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law. (Subsection 63-46a-2(2))

“**Anniversary Date**” means the date that is five years after the date of a rule’s original enactment, or the date of its last five-year review.

“**ARRC**” means the Administrative Rules Review Committee established by Section 63-46a-11.

“**Bulletin**” means the *Utah State Bulletin*. (Subsection 63-46a-2(3))

“**Catchline**” means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13. (Subsection 63-46a-2(4)) The catchline is not enforceable text.

“**Code**” means the body of all effective rules as compiled and organized by the division and entitled *Utah Administrative Code*. (Subsection 63-46a-2(5))

“**DAR**” means the Division of Administrative Rules. This reference is used on the rule analysis forms and other forms because of space constraints.

“**DAR File No.**” means a number assigned to each rule action filed with the Division, sometimes referred to as “File No.” The DAR File No. is assigned in sequence based on receipt date and time, except that a Change in Proposed Rule is assigned the same number as the proposed rule upon which it is based.

“**Director**” means the director of the Division of Administrative Rules. (Subsection 63-46a-2(6))

“**Division**” means the Division of Administrative Rules. (Subsection 63-46a-2(7))

“**Effective**” means operative and enforceable. (Subsection 63-46a-2(8))

“**File**” means to submit a document to the division as prescribed by this chapter. (Subsection 63-46a-2(9)(a))

“**Filing date**” means the day and time the document is recorded as received by the division. (Subsection 63-46a-2(9)(b))

“**Interested person**” means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10. (Subsection 63-46a-2(10))

“**Keywords**” mean indexing terms derived from “Key Word for the Utah Administrative Code” assigned to a rule by the promulgating agency. These terms are used to prepare a basic subject index which is published in the *Utah State Bulletin* and in the *Utah Administrative Rules Index of Changes*.

“**Nonsubstantive Change**” means a change that does not affect the manner in which the provisions of a rule are applied to a regulated class. (Subsections 63-46a-3(4)(d) and 63-46a-6(2))

“**Order**” means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons. (Subsection 63-46a-2(11))

“**Person**” means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency. (Subsection 63-46a-2(12))

“**Policy**” means a statement applying to persons or agencies that: (i) broadly prescribes a future course of action, guidelines, principles, or procedures; or (ii) prescribes the internal management of an agency. A policy is a rule if it conforms to the definition of a rule. (Subsection 63-46a-2(13))

“**Publication**” means making a rule available to the public by printing the rule or a summary of the rule in the bulletin. (Subsection 63-46a-2(14))

“**Publication date**” means the inscribed date of the bulletin. (Subsection 63-46a-2(15))

“**Repeal and reenact**” means a specific type of proposed rule. The Act permits agencies to repeal and reenacts a rule provided that the agency provides an extended summary in the rule analysis. The summary must include “a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule, and a summary of new substantive provisions appearing only in the enacted rule.” Agencies typically use the repeal and reenact provision when changes to a rule are so extensive that showing specific amendments would be confusing to the reader. (Subsection 63-46a-4(4))

“**Rule**” means an agency’s written statement that: (i) is explicitly or implicitly required by state or federal statute or other applicable law; (ii) has the effect of law; (iii) implements or interprets a state or federal legal mandate; and (iv) applies to a class of persons or another agency. “Rule” includes the amendment or repeal of an existing rule.

“Rule” does not mean: (i) orders; (ii) unenforceable policies; (iii) internal management policies of the agency that do not restrict the legal rights of a class of persons or another agency; (iv) the governor’s executive orders or proclamations; (v) opinions issued by the attorney general’s office;

(vi) declaratory rulings issued by the agency according to the provisions of Section 63-46b-21 except as required by Section 63-46a-3; or (vii) rulings by an agency in adjudicative proceedings, except as required by Subsection 63-46a-3 (6). (Subsection 63-46a-2(16))

In addition, as used in this manual, “Rule” does not include legislative rules adopted by the Legislature or judicial rules adopted by the Judicial Council.

“**Rule action**” means the different types of rulemaking actions permitted by the *Rulemaking Act* including: Proposed Rule (Section 63-46a-4), Change in Proposed Rule (Section 63-46a-6), 120-Day (Emergency) Rule (Section 63-46a-7), Nonsubstantive Change (Subsections 63-46a-3(4)(d) and 63-46a-6(2)), Five-Year Notice of Review and Statement of Continuation (Section 63-46a-9), Five-Year Review Extension (Section 63-46a-9), Five-Year Review Expiration (Section 63-46a-9), Legislative Expiration (Section 63-46a-11.5), and Governor’s Extension (Section 63-46a-11.5). See page [15](#) for more information.

“**Rule analysis**” means the format prescribed by the division to summarize and analyze rules. (Subsection 63-46a-2(17)). The Division has developed two rule analysis forms: “Notice of Proposed Rule or Change,” and “Notice of 120-Day (Emergency Rule).” See pages [131](#) and [135](#) for facsimiles of these forms.

“**Substantive change**” means a change in a rule that affects the application or results of agency actions. (Subsection 63-46a-2(18))

“**Utah Code**” means the statutory codification of legislative enactments; also known as the *Utah Code Annotated*, 1953.

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